

## INDEX

	Page
Report and Order of the Board, June 22, 1959 .....	1
Order of July 10, 1959 .....	15
Order of July 27, 1959 .....	16
Decision Recommended by C. W. Robinson, Examiner ..	17
Prehearing Stipulation .....	34
Order of February 20, 1961 .....	36
Petition .....	37
Complaint, Docket No. 827 .....	41
Complaint, Docket No. 841 .....	45
Petition, Docket No. 827 .....	49
Notice of Enlargement of Time to File Answers .....	51
Answer, Docket No. 827 .....	52
Order of May 1, 1958 .....	63
Notice of Consolidation and of Hearing .....	65
Petition, Docket Nos. 827, 835 and 841 .....	66
Affidavit of Renato C. Giallorenzi .....	67
Notice of Postponement of Hearing .....	70
Prehearing Conference .....	70
Excerpts From Testimony and Proceedings .....	71

### Witnesses:

Shillo Adir .....	122
Jose J. Borrero .....	74, 77, 134, 157
Philip R. Consolo .....	84
Jack Friedlander .....	133, 154, 155
Louis F. Meyer .....	104
Leonard Morey .....	73, 83
Alberto Sanchez .....	76

	Page
Exhibit 1 .....	170
Exhibit 2 .....	171
Exhibit 6 .....	171
Exhibit 7 .....	173
Exhibit 15 .....	177
Exhibit 16 .....	187
Exhibit 17 .....	191
Exhibit 18 .....	195
Exhibit 19 .....	199
Exhibit 21 .....	204a
Exhibit 25 .....	204b
Exhibit 45 .....	210
Exhibit 47 .....	212
Exhibit 75 .....	213
Exhibit 76 .....	215
Exhibit 80 .....	216
Exhibit 81 .....	217
Exhibit 85 .....	217
Exhibit 90 .....	218
Exhibit 91 .....	219
Exhibit 92 .....	219
Exhibit 93 .....	221



# VOLUME II

## INDEX

iii

	Original	Print
Proceedings in the United States Court of Appeals for the District of Columbia Circuit (Case Nos. 16,366 and 16,369) .....	243	243
Supplemental joint appendix consisting of portions of proceedings before the Federal Maritime Board (Docket Nos. 827, 835 and 841) .....	243	243
Letter from Herman Goldman to Federal Maritime Board, dated February 6, 1959 .....	248	244
Letter from Robert N. Kharasch to James L. Pimper, dated February 10, 1959 .....	249	246
Letter from Robert N. Kharasch to James L. Pimper, dated April 2, 1959 .....	251	247
Letter from Herman Goldman to James L. Pimper, dated April 7, 1959 .....	252	249
Supplemental complaint (excerpts) (Docket No. 827 Sub. No. 1) .....	255	252
Brief of Flota Mercante Grancolombiana, S.A. (excerpts) .....	256	253
Recommended decision of C. W. Robinson, Examiner, on reparation, dated October 5, 1960 .....	259	255
Exceptions of respondent Flota Mercante Grancolombiana, S.A., and brief in support (excerpts) .....	267	262
Report of the Board .....	270	265
Order of the Board (Docket No. 827) .....	284	281
Order in the United States Court of Appeals, dated August 11, 1961; vacated in part on August 31, 1961. (Case Nos. 15,330, 16,366 and 16,369) .....	285	282
Transcript of proceedings (excerpts)—November 5, 6, 7, 11, 13, and 21, and December 2, 1958 .....	288	283
Testimony of Jose J. Borrero—		
(recalled)—		
direct .....	288	283
Jack Friedlander—		
(recalled)—		
direct .....	289	285
cross .....	290	285
redirect .....	291	287

Supplemental joint appendix consisting of portions  
of proceedings before the Federal Maritime Board  
(Docket Nos. 827, 835 and 841)—Continued  
Transcript of proceedings (excerpts)—November  
5, 6, 7, 11, 13, and 21, and December 2, 1958—  
Continued

	Original	Print
Testimony of Philip R. Consolo—		
direct .....	291	287
cross .....	299	295
Louis F. Meyer—		
direct .....	318	317
cross .....	319	319
Maxwell Boyarsky—		
direct .....	319	319
Jose J. Borrero—		
(recalled)—		
direct .....	324	324
Transcript of proceedings (excerpts)—May 9, 10, 11, 12, and 26, 1960 .....	332	326
Testimony of Max Boyarsky—		
(recalled)—		
direct .....	335	329
Louis F. Meyer—		
direct .....	336	330
Shillo Adir—		
direct .....	337	331
Louis F. Meyer—		
(resumed)—		
direct .....	337	332
cross .....	338	333
Shillo Adir—		
(resumed)—		
direct .....	340	335
Philip R. Consolo—		
direct .....	342	338
cross .....	343	338
William Fanelle—		
direct .....	347	344
cross .....	356	353
redirect .....	359	357
Alberto Sanchez—		
direct .....	359	358

# INDEX

v

Supplemental joint appendix consisting of portions  
of proceedings before the Federal Maritime Board  
(Docket Nos. 827, 835 and 841)—Continued  
Transcript of proceedings (excerpts)—May 9,  
10, 11, 12, and 26, 1960—Continued

	Original	Print
Testimony of Harald Solvang—		
direct .....	363	361
cross .....	375	374
direct .....	382	383
recross .....	383	384
Jose J. Borrero—		
direct .....	384	386
Alfred A. Campion—		
direct .....	389	391
cross .....	398	401
Samuel G. Staff—		
direct .....	402	406
cross .....	408	412
Jack Friedlander—		
direct .....	410	415
cross .....	417	423
Louis Grossman—		
direct .....	421	425
cross .....	424	429
Alvaro Diaz S.—		
direct .....	426	430
cross .....	434	439
Exhibits: .....	436	441
No. 15—Agreement between Flota Mercante Grancolombiana, S.A., and Leonard Morey and Samuel G. Staff, dated July 20, 1955 (excerpts) (Docket No. 827) .....	436	441
No. 16—Agreement between Flota Mercante Grancolombiana, S.A., and Panama Ecuador Shipping Corporation, dated May 22, 1957 (excerpts) .....	436	442
No. 20—Letter from Flota Mercante Gran- colombiana, S.A., to Panama Ecuador Ship- ping Corp., dated June 19, 1958 .....	437	443

Supplemental joint appendix consisting of portions  
of proceedings before the Federal Maritime Board  
(Docket Nos. 827, 835 and 841)—Continued  
Exhibits—Continued

	Original	Print
No. 41—Consolo banana purchase and sale experience (excerpts) (Docket No. 827) .....	439	445
No. 42—Computation of damages for each Grancolombiana sailing (excerpts) (Docket No. 827) .....	442	448
No. 54—Banana freighting agreement—freighter vessels—between Grace Line Inc. and Banana Distributors Inc., dated May 2, 1958 (excerpts) .....	444	450
No. 83—Letter from Flota Mercante Grancolombiana, S.A., to Andes Fruit & Produce Corp., dated July 8, 1957 .....	445	451
No. 88—Letter from Flota Mercante Grancolombiana, S.A., to Wm. Turino Company, Inc., dated July 8, 1957 .....	446	452
No. 107—Schedule of freights collected on banana imports into United States North Atlantic Ports in vessels of Flota Mercante Grancolombiana, S.A., after "Cdad. de Baranquilla" Voy. 5 North .....	447	453
No. 111—Consolo banana purchase and sales experience .....	448	454
No. 112—Computation of damages for each Grancolombiana sailing .....	456	450
No. 113—Final summary of damages for Grancolombiana sailings .....	451	457
No. 115—Baltimore Service .....	452	458
No. 116—Schedule of cubic capacity allotments .....	455	461
Proceedings in the United States Court of Appeals for the District of Columbia Circuit (Case Nos. 18,230 and 18,235) .....	456	462

# INDEX

vii

	Original	Print
Second supplemental joint appendix consisting of portions of proceedings before the Federal Maritime Board (Docket Nos. 827, 835 and 841) .....	457	462
Complainant's reply to petition of respondent Grancolombiana for extension of time to answer complaint (excerpts) (Docket No. 827) ..	463	463
Letter from George F. Galland to G. O. Basham, dated April 10, 1958 .....	465	465
Petition to intervene (Docket No. 827) .....	467	467
Ruling on motion for production of documents for inspection and copying (Docket Nos. 827 and 835) .....	468	468
Ruling on requests for bills of particulars and for discovery and inspection of documents (Docket Nos. 827 and 841) .....	469	469
Ruling on motions to take depositions and notice of further prehearing conference (Docket Nos. 827 and 841) .....	471	471
Brief for petitioner Flota Mercante Grancolombiana, S.A., and proposed findings of fact and conclusions (excerpts) (Docket No. 835) .....	472	472
Brief of Panama Ecuador Shipping Corporation (excerpts) (Docket Nos. 827, 835 and 841) ....	473	473
Brief of complainant Philip R. Consolo (excerpts) (Docket Nos. 827, 835 and 841) .....	475	475
Complainant's proposed findings and conclusions .....	479	480
Brief of Public Counsel (excerpts) (Docket Nos. 827, 835 and 841) .....	480	480
Reply of Public Counsel to exceptions and to motion to reopen the record for receipt of additional evidence (excerpts) (Docket Nos. 827, 835 and 841) .....	483	484
Letter from William J. Lippman to Examiner C. W. Robinson, dated November 9, 1959 .....	484	484
Letter from R. C. Giallorenzi to Examiner C. W. Robinson, dated November 13, 1959 .....	486	488
Letter from Robert E. Mitchell to Renato C. Giallorenzi, dated November 18, 1959 .....	488	490
Petition for review in the United States Court of Appeals (excerpt) (Case No. 16,366) .....	508	491

Second supplemental joint appendix consisting of portions of proceedings before the Federal Maritime Board (Docket Nos. 827, 835 and 841)—  
Continued

	Original	Print
Petition for review of an order of the Federal Maritime Board in the United States Court of Appeals (excerpt) (Case No. 16,369) .....	508	491
Brief for respondents in the United States Court of Appeals (excerpts) (Case Nos. 16,366 and 16,369) .....	514	492
Petition to reopen (excerpts) (Docket Nos. 827 and 827 (Sub. No. 1)) .....	525	493
Commission's notice of reopening of proceeding (Docket No. 827 (Sub. No. 1)) .....	530	498
Respondent's reply brief upon remand and reconsideration (excerpt) (Docket No. 827 (Sub. No. 1)) .....	540	499
Commission's report and order dated September 16, 1963 (Docket No. 827 (Sub. No. 1)) .....	562	500
Order directing payment of reparations (Docket No. 827 (Sub. No. 1)) .....	575	514
Errata sheet to Commission's report (Docket No. 827 (Sub. No. 1)) .....	576	515
Further supplemental certifications of record by Federal Maritime Commission in the United States Court of Appeals (Case Nos. 18,230 and 18,235) .....	577	515
Official Minutes (excerpts) (Docket Nos. 827, 827 (Sub. No. 1), 835 and 841) .....	578	516
May 1, 1958 (Regular Meeting) .....	578	516
June 22, 1959 (Regular Meeting) .....	580	519
June 22, 1959 (Special Meeting) .....	581	520
January 25, 1961 (Special Meeting) .....	582	520
February 9, 1961 (Regular Meeting) .....	583	521
March 24, 1961 (Special Meeting) .....	584	522
March 27, 1961 (Regular Meeting) .....	585	523
March 28, 1961 (Special Meeting) .....	586	524
July 3, 1962 (Special Meeting) .....	587	524
October 29, 1962 (Regular Meeting) .....	588	526
September 16, 1963 (Regular Meeting) .....	589	527

Second supplemental joint appendix consisting of portions of proceedings before the Federal Maritime Board (Docket Nos. 827, 835 and 841)—Continued

Exhibits: _____	Original 590	Print 528
No. 1—Flota Mercante Grancolombiana, S.A.—Statement as to when each of our vessels entered the banana trade between Ecuador and United States North Atlantic Ports (Docket No. 827) _____	590	528
No. 15—Agreement between Flota Mercante Grancolombiana, S.A., and Leonard Morey and Samuel G. Staff, dated July 20, 1955 (excerpts) (Docket No. 827) _____	591	528
No. 33—B a n a n a Freighting agreement—Freighter Vessels—between Grace Line, Inc. and Philip R. Consolo, dated September 30, 1957 (excerpts) _____	592	530
No. 34—Letters from Chilean Line to Philip R. Consolo, dated July 28, 1958; September 3, 1958 (excerpts) and September 24, 1958 (excerpts) _____	593	531
No. 36—Memorandum of agreement between Grace Line Inc. and Philip R. Consolo, dated July 15, 1953 (excerpt) _____	597	536
No. 37—Memorandum of agreement between Grace Line Inc. and Philip R. Consolo, dated July 15, 1953 _____	602	536
Letter from Grace Line Inc. to Mr. Philip R. Consolo, dated March 24, 1955 _____	606	541
Letter from Grace Line Inc. to Mr. Philip R. Consolo, dated July 20, 1955 _____	607	542
No. 41—Consolo banana purchase and sale experience (excerpts) (Docket No. 827) _____	608	543
No. 42—Computation of damages for each Grancolombiana sailing (excerpts) (Docket No. 827) _____	610	545
No. 110—Baltimore Stevedoring Grancolombiana arrivals, 9/18/59–4/15/60 (Docket No. 827) _____	612	547

Second supplemental joint appendix consisting of portions of proceedings before the Federal Maritime Board (Docket Nos. 827, 835 and 841)—Continued

	Original	Print
Transcript of proceedings (excerpts) .....	613	548
Prehearing conference, May 7, 1958 (Docket Nos. 827 and 835) .....	613	548
Further prehearing conference, September 22, 1958 (Docket Nos. 827 and 841) .....	621	556
Hearing, November 5, 1958 (Docket Nos. 827, 835 and 841) .....	622	557
Hearing, November 6, 7, 11, 12, 20, 21 and 24, December 1, 2 and 4, 1958 .....	623	558
Testimony of Philip R. Consolo—		
direct .....	623	558
cross .....	628	564
redirect .....	629	566
cross .....	633	570
Jack Friedlander—		
direct .....	638	574
Jose J. Borrero—		
direct .....	649	586
Jack Friedlander—		
cross .....	654	591
redirect .....	658	595
Frank Visconti—		
direct .....	660	596
Jose J. Borrero—		
cross .....	663	599
Transcript of proceedings (excerpts) May 9, 1960 .....	671	607
Testimony of Max Boyarsky—		
redirect .....	671	607
Shillo Adir—		
examination by Mr. Kharasch .....	672	609
Louis F. Meyer—		
direct .....	673	610
Shillo Adir—		
(resumed)—		
direct .....	680	617
cross .....	680	617



Second supplemental joint appendix consisting of portions of proceedings before the Federal Maritime Board (Docket Nos. 827, 835 and 841)—Continued

	Original	Print
Transcript of proceedings (excerpts) October 24, 1962 .....	691	618
Oral argument (Docket No. 827 (Sub. No. 1)) .....	691	618
Motion of intervenor Philip R. Consolo 1) to dismiss the petition for review for lack of jurisdiction, or 2) alternatively, to require petitioner to file bond (Case No. 16,369) .....	694	620
Memorandum in support .....	695	621
Reply of respondents to intervenor's motion to dismiss or require a bond (Case No. 16,369) .....	719	637
Intervenor's reply to answers to motion to dismiss or require bond (excerpts) (Case No. 16,369) .....	728	644
Brief for petitioner Philip R. Consolo (excerpts) (Case No. 16,366) .....	734	647
Reply brief of Philip R. Consolo, petitioner in Case No. 16,366; and brief as intervenor in Case No. 16,369 (excerpt) .....	737	649
Opinion, Washington, J., Case Nos. 15,330; 16,366 and 16,369 decided April 26, 1962 .....	739	650
Judgment, Case Nos. 15,330; 16,366 and 16,369, dated April 26, 1962 .....	758	668
Petition of Flota Mercante Grancolombiana, S.A. for review of an order of the Federal Maritime Commission (excerpts) Case No. 18230 .....	759	669
Petition of Philip R. Consolo for review of a portion of an order of the Federal Maritime Commission (excerpt) (Case No. 18235) .....	767	676
Supplement to petition of Flota Mercante Grancolombiana, S.A. for review Case No. 18,230 .....	769	677
Prehearing stipulation (excerpts) (Case Nos. 18,230 and 18,235) .....	770	679
Addendum to prehearing stipulation (Case Nos. 18,230 and 18,235) .....	775	683
Prehearing order, December 16, 1963, Case Nos. 18,230 and 18,235 .....	777	684

	Original	Print
Order granting motion to supplement petition for review, Case No. 18,230 .....	778	685
Opinion, Washington, J. Case Nos. 18,230 and 18,235, decided December 17, 1964 .....	779	686
Judgment, Case Nos. 18,230 and 18,235, dated December 17, 1964 .....	794	699
Order allowing certiorari .....	795	700

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 15,330

---

FLOTA MERCANTE GRANCOLOMBIANA, S.A., *Petitioner,*

v.

FEDERAL MARITIME BOARD AND UNITED STATES OF AMERICA,  
*Respondents,*

PHILIP R. CONSOLO, ET AL., *Intervenors.*

---

**Petition for Review of Order of the Federal Maritime Board**

---

**JOINT APPENDIX**

---

---

---

**FEDERAL MARITIME BOARD**

---

**No. 827**

**PHILIP R. CONSOLO**

*v.*

**FLOTA MERCANTE GRANCOLOMBIANA, S.A.**

---

**No. 835**

**FLOTA MERCANTE GRANCOLOMBIANA, S.A.—CARRIAGE OF BANANAS  
FROM ECUADOR TO THE UNITED STATES**

---

**No. 841**

**BANANA DISTRIBUTORS, INC.**

*v.*

**FLOTA MERCANTE GRANCOLOMBIANA, S.A.**

---

---

## FEDERAL MARITIME BOARD

No. 827

PHILIP R. CONSOLO

v.

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

No. 835

FLOTA MERCANTE GRANCOLOMBIANA, S.A.—CARRIAGE OF BANANAS  
FROM ECUADOR TO THE UNITED STATES

No. 841

BANANA DISTRIBUTORS, INC.

v.

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

*Submitted May 12, 1959. Decided June 22, 1959*

Respondent, in the operation of vessels between ports on the west coast of South America and ports on the North Atlantic coast of the United States and between ports on the west coast of South America and United States Gulf of Mexico ports, found to be a common carrier by water and therefore subject to the provisions of the Shipping Act, 1916, as amended.

Respondent's practice of contracting all of its refrigerated space on its vessels operating between ports in Ecuador and ports on the North Atlantic coast of the United States to one banana shipper to the exclusion of other qualified banana shippers, found to be unjustly discriminatory in violation of section 14 Fourth of the Shipping Act, 1916, as amended, and to be unduly and unreasonably prejudicial and disadvantageous in violation of section 16 First thereof.

Forward-booking arrangements of periods not to exceed two years, entered into pursuant to just and reasonable regulations and practices relating to the receiving, handling, stowing, transporting, and discharging of bananas, under which respondent's refrigerated space would be equitably prorated among qualified banana shippers, found to be not unjustly discriminatory in violation of sections 14 Fourth and 16 First of the Shipping Act, 1916, as amended.

*Robert N. Kharasch and William J. Lippman* for Philip R. Consolo, and *Richard Kurrus and Paul D. Page, Jr.*, for Banana Distributors, Inc., complainants.

*Renato C. Giallorenzi and John H. Dougherty* for Flota Mercante Grancolombiana, S.A., respondent and petitioner.

*Elias Rosenzweig* for Panama Ecuador Shipping Corporation, and *Thomas J. O'Neill* for Newark Banana Supply, interveners.

*Robert J. Blackwell* as Public Counsel.

#### REPORT OF THE BOARD

CLARENCE G. MORSE, *Chairman*, BEN H. GUILL, *Vice Chairman*, THOS. E. STAKEM, JR., *Member*

#### BY THE BOARD:

These three consolidated proceedings relate to the lawfulness of the movement of bananas by Flota Mercante Grancolombiana, S.A. (Flota), from Ecuador to United States ports in the foreign commerce of the United States. In No. 827, Philip R. Consolo (Consolo) alleges that Flota, in refusing to allocate part of its refrigerated (reefer) space to Consolo for the movement of his bananas from Ecuador to U.S. North Atlantic ports, and in granting that space to Panama Ecuador Shipping Corporation (Panama Ecuador), unjustly discriminated against Consolo in violation of section 14 Fourth<sup>1</sup> of the Shipping Act, 1916, as amended (the Act), and unduly prejudiced him and unduly advantaged Panama Ecuador in violation of section 16<sup>2</sup> of the Act. Consolo further alleges that in contracting all of its reefer space to a single shipper, and in refusing the shipments of others, respondent operated contrary to the terms of a duly approved agreement, in violation of section 15 of the Act.

In No. 841, Banana Distributors, Inc. (Banana Distributors), similarly alleges violation of sections 14 Fourth and 16 of the Act.

<sup>1</sup> Section 14 of the Act provides in part:

"That no common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country—

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or *unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage* \* \* \*." (Emphasis added)

<sup>2</sup> Section 16 of the Act provides in part:

"That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Flota, in No. 835, petitioned for a declaratory order relating to its banana practices in the Ecuador-U.S. North Atlantic trade and the Ecuador-U.S. Gulf trade. It contends that it is not a common carrier of bananas, that its contracts with Panama Ecuador are not unlawful, and that the physical characteristics of its vessels are so different from those of its competitor Grace Line Inc. (Grace) that our rule in *Banana Distributors, Inc. v. Grace Line Inc.*, 5 F.M.B. 278 (1957), and *Philip R. Consolo v. Grace Line Inc.*, 4 F.M.B. 293 (1953), is not applicable to its banana carryings.

Public Counsel, a party in each of these proceedings, contends that, in contracting all of its reefer space to Panama Ecuador to the exclusion of other qualified shippers, including complainants here, Flota has violated sections 14 Fourth and 16 of the Act. In No. 835 it is his position that Flota be ordered to cancel its present contracts and make its reefer space available to all qualified shippers.

Panama Ecuador, an intervener in all of the proceedings, argues, in effect, that the physical limitations of the Flota vessels are such that only one shipper can be accommodated on them and therefore the resulting discrimination, prejudice, and advantage, if any, are not undue, unreasonable, or unjust.

Newark Banana Supply intervened in No. 841 but did not participate further in the proceedings.

#### FACTS

Flota operates six vessels in its common-carrier service between ports on the west coast of South America and U.S. North Atlantic ports, with a weekly frequency. At the time of hearing it employed five new 17½-knot vessels in the trade and a sixth was scheduled to be added in early 1959. They carry general cargo northbound and southbound on this regularly advertised and maintained service. Northbound sailings commence in Peru, proceed to Ecuador where bananas are loaded, to Buenaventura, Colombia, where coffee—Flota's most important northbound commodity—is loaded, then to Philadelphia where bananas are unloaded, and thence to Baltimore and New York. Although the vessels stop at Buenaventura for about 60 hours, steaming time from Guayaquil, Ecuador, to Philadelphia generally is 11 days.

Bananas have been carried by Flota in this trade since 1950, always under special contract, and never has the company accommodated more than one shipper at any one time.

Both Consolo and Banana Distributors are experienced banana shippers. Consolo repeatedly has sought reefer space from Flota for the carriage of its bananas since 1955. Banana Distributors un-

successfully sought reefer space on Flota's vessels in 1957. Others also have requested reefer space for bananas, but Flota made no check to determine whether such applicants were financially or otherwise responsible.

In 1955 Flota presented Consolo a rate for the entire reefer space on its five vessels in the trade. Consolo then countered with an offer to take the space if the rate on the lower hold were reduced 25 percent, or in the alternative, to occupy and pay for only the upper 'tween and lower 'tween decks of the reefer hold on each ship.<sup>5</sup> Flota rejected this bid and later (July 25, 1955) entered into an exclusive two-year contract with the predecessors in interest of Panama Ecuador covering all the reefer space on the then five vessels in the trade. Consolo was advised that the space was under contract for two years. In 1957 Consolo again submitted an offer on Flota's reefer space, which was rejected in favor of an offer from Panama Ecuador covering, this time, a period of three years. After our decision in *Banana Distributors, Inc. v. Grace Line Inc.*, *supra*, both Consolo and Banana Distributors sought an allocation of reefer space from Flota, but without success.

The single reefer hold on each of Flota's vessels has a capacity of 55,000 cubic feet, and is divided into three levels: upper 'tween, lower 'tween, and lower deck. Hatches between these levels are closed off with three 450-pound plugs each, over which are placed hatch covers. The hold was designed primarily for the accommodation of frozen commodities in contrast to such holds on the Grace vessels, which were designed for the carriage of bananas. The longer the period the hold is open for loading, the longer it takes to reduce the hold temperature to the desired 52 degrees. Uncontraverted testimony indicates that with a 15-hour loading time, 40 hours are required to reduce the hold temperature, and that for every additional hour of loading it would take two additional hours of cooling time to reach 52 degrees.

As previously noted, the single shipper utilizing Flota's reefer hold usually completes loading within 13½ to 15 hours. There are two side ports (one on each side of the vessel) at the upper 'tween deck of the hold. A ramp runs from the side port to a pontoon secured to the vessel. Barges carrying from 800 to 4,000 stems tie up to the pontoon and stevedores then carry the cargo up the ramps and stow it as directed. The side ports are somewhat smaller than those on the Grace vessels, and they are higher above the water line, causing

<sup>5</sup> The reefer hold on each ship is divided into three decks: upper 'tween, lower 'tween and lower hold. The lowest deck is so high that it will accommodate three upright layers of bananas, rather than two, subjecting the bottom layer to damage from excessive weight. This is not the case in Flota's new vessels: four of the five actually have less height in the lower hold than in the other two decks.



the ramp to be more steeply inclined. Too, the single ramp must be traversed both entering and leaving the ship, whereas on the Grace ships separate ramps are used for entering and exiting. Stowing begins in the lower hold, which necessitates descent via catwalks through hatches in the upper 'tween and lower 'tween decks. While the lower hold is being filled the select fruit is segregated and stowed in the upper 'tween deck. Upon completion, hatch plugs and covers must be replaced, sealing off the compartments. Ramps, catwalks, hatch plugs and covers, and bin boards impede, to some extent, the rapid loading of the compartments. The decks are fitted for stanchions, into which boards are inserted to form bins. Thus fruit is separated and more properly stowed. In unloading, generally all the fruit must be removed through one side port only. Unloading is accomplished in the inverse order of loading.

Flota also operates, as a common carrier by water, a service between ports on the west coast of South America and U. S. Gulf of Mexico ports, utilizing four older and slower vessels. These vessels have reefer facilities and involve an 8 to 10 day transit time from Ecuador to Galveston, Texas, where bananas are discharged for a single shipper (Grand Shipping, Inc.). This shipper enjoyed an exclusive-use contract of the space for a one-year period from June 1, 1957, to June 1, 1958, and it was renewed for a 6 months' period in view of the petition for the declaratory order herein. It is not apparent that other qualified banana shippers have applied for, and have been denied, reefer space in this trade.

#### RECOMMENDED DECISION

The presiding examiner found that (1) Flota is a common carrier of bananas from Ecuador to the Atlantic and Gulf coasts of the United States; (2) Flota's exclusion of Consolo and Banana Distributors from participation in the use of its reefer space on its vessels from Ecuador to U.S. Atlantic ports results in violation of sections 14 Fourth and 16 of the Act; (3) Flota should cancel its existing contracts for the carriage of bananas from Ecuador to the U. S. Atlantic and Gulf coasts; and (4) Flota should be required to prorate its reefer space on a fair and reasonable basis among existing shippers and all other qualified banana shippers, under forward-booking arrangements of not more than two years.

Exceptions were filed by Consolo, Flota, and Panama Ecuador. Replies were filed by Consolo, Panama Ecuador, Flota, and Public Counsel.

Although generally supporting the recommended decision, Consolo excepted to the failure of the examiner (1) to recommend that the

Board order Flota to allot to him 50,000 cu. ft. of reefer space per week, and (2) to make certain findings of fact relating to common carriage and discrimination and prejudice.

Flota excepted to the findings that (1) it is a common carrier of bananas; (2) it has violated sections 14 Fourth and 16 of the Act; and (3) it should cancel its present banana contracts and prorate its reefer space among all qualified shippers. It contends that the decision is not supported by evidence, is contrary to law, and that the findings of violation of sections 14 and 16 of the Act were beyond the scope of the proceeding.

In its exceptions Panama Ecuador claims that the findings are not supported by the record and that the conclusions are contrary to law. It contends that the contract between it and Flota is not subject to the jurisdiction of the Board since it involves contract carriage.

#### DISCUSSION AND CONCLUSIONS

What we said recently in the Supplemental Report in *Banana Distributors, Inc. v. Grace Line Inc.*, 5 F.M.B. 615 (herein referred to as the Supplemental Report) is appropriate here, and we feel is dispositive of the issues presented in these proceedings. It is clear that in the operation of its freighter vessels between Ecuador and U. S. North Atlantic ports and between Ecuador and U. S. Gulf of Mexico ports, Flota is a common carrier by water in the foreign commerce of the United States, and therefore is subject to the provisions of the Shipping Act and to the jurisdiction of this Board. It is of no moment that Flota has restricted its banana carryings to special contracts: " \* \* the movement of any commodity by a common carrier, regardless of the name the carrier uses in connection with it—or any part of it—must conform to the requirements of the Act, including its discriminatory injunctions, or be stricken down." (Supplemental Report, page 622) Likewise, in *Philip R. Consolo v. Grace Line Inc.*, *supra*, we stated " \* \* in spite of special arrangements of whatever sort, respondent [a common carrier by water] may not lawfully assume the status of a contract carrier to any shipper on its common carrier vessels, or grant to any shipper on such vessel special rates, special privileges, or other special advantages not accorded to all persons indifferently." (page 300) And again, in the Supplemental Report, page 622, we said that " \* \* a common carrier \* \* \* owes a duty to the shipping public to serve similarly situated shippers alike."

It is clear from this record that both complainants are qualified banana shippers. It is similarly clear that they were denied reefer space accommodations by Flota, to their prejudice and disadvantage, and that Panama Ecuador, in receiving and using that space, was fav-

ored and advantaged. We find no justification for this conduct on the part of Flota, and conclude that in denying reefer space to complainants, and in granting that space to a single favored shipper, Flota has acted in violation of sections 14 Fourth and 16 of the Act.

The arguments relating to the differences between Flota's vessels and Grace's vessels are not impressive. Both companies are common carriers by water and the Act applies equally to both. Inferior refrigeration, smaller sideports (and higher from the water line), an additional deck, cumbersome hatch plugs, and other paraphernalia found on the Flota vessels do not exempt Flota from the discriminatory proscriptions of the statute: qualified banana shippers must not be excluded from participation in the reefer space.

The limitations of Flota's vessels relate, we believe, to operational matters which we feel may be more properly solved by an experienced carrier.<sup>4</sup> Our concern is with the protection afforded by the Act to qualified shippers.

Much has been made of the loading time required. The present shipper takes from 13½ to 15 hours to complete loading. Testimony on the additional time required by multiple shippers varies. Panama Ecuador's witness believes that loading time would be increased by 7 to 12 hours if three shippers were accommodated, 10 to 15 additional hours if six shippers were granted space, and up to 50 additional hours if ten shippers were involved; on the other hand, Consolo estimated that only an additional hour would be necessary if six shippers shared the space, and Banana Distributor's witness was of the view that six shippers would cause a two hour delay. Based on the record, the examiner found that loading by multiple shippers should not add more than five hours to the present loading time. We feel that the judgment of the examiner is clearly supported by the evidence. But even if up to 15 additional hours were required to accommodate six banana shippers, that fact would not justify exclusive long term space contracts to a favored shipper and the denial of that space to a qualified competitor. Operational difficulties and vessel limitations do not justify prejudice and discrimination otherwise undue and unreasonable.

On this record we find and conclude that Flota's practices in the Ecuador-North Atlantic trade—the exclusion of Consolo and Banana Distributors from participation in its reefer space and the allocating of that space to Panama Ecuador exclusively—constitute a violation

<sup>4</sup> Similarly, segregating or otherwise identifying bananas of different shippers is an operational function and was so recognized by the examiner. The solutions suggested by him do not constitute error. As he pointed out, "There may be other means of easy identification which would suggest themselves to those intimately familiar with the ramifications of the banana business."

of sections 14 Fourth and 16 First of the Act. Contracts with the present shipper must be cancelled and the reefer space on the vessels in this trade must be made available, upon fair and reasonable basis, to all qualified banana shippers. Similarly, we find that Flota, as a common carrier by water between Ecuador and U.S. Gulf of Mexico ports, must make its reefer space available to all qualified banana shippers in that trade.

As we said in the Supplemental Report, a forward-booking system under which space contracts would be firm for not to exceed two years, in view of the economic problems inherent in the banana importing business, would be characterized as "just" and "reasonable" as opposed to "unjust" and "unreasonable", which aptly describes the present system.

What we shall require of Flota is that it make its reefer space proportionally available to all qualified banana shippers, upon a fair and reasonable basis, under forward-booking arrangements of not to exceed two years. We feel, however, that the operational problems may best be solved by the parties concerned. Flota may, through reasonable rules and regulations, require bonds from shippers, provide for dead freight, inspection, loading, stowing, and discharging, as well as other reasonable requirements, taking into consideration the physical limitations of the vessels and their reefer accommodations and the like, which shippers must meet in order to qualify as users of space. At the end of any forward-booking period, Flota shall re-allocate its space for additional periods among qualified applicants consonant with our directives herein.

Since we believe that the foregoing disposes of the matter, we make no findings with reference to the allegations of violation of section 15 of the Act.

An appropriate order will be entered.

5 F.M.B.

PHILIP R. CONSOLO ET AL. v. FLOTA MERCANTE GRANCOLOMBIANA 641

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D.C., on the 22nd day of June A.D. 1959.

No. 827

PHILIP R. CONSOLO

v.

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

No. 835

FLOTA MERCANTE GRANCOLOMBIANA, S.A.—CARRIAGE OF BANANAS  
FROM ECUADOR TO THE UNITED STATES

No. 841

BANANA DISTRIBUTORS, INC.

v.

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

The proceedings docketed as Nos. 827 and 841 being at issue upon complaints and answers on file, and the proceeding docketed as No. 835 being at issue upon a petition for a declaratory order and replies thereto on file, and the proceedings having been consolidated and duly heard with respect to all issues other than reparation, and full investigation of the matters and things involved having been had, and the Board, on the date hereof, having made and entered a report stating its conclusions, decision, and findings therein, which report is hereby referred to and made a part hereof:

*It is ordered, That:*

1. Respondent be, and it is hereby, notified and required, not later than August 1, 1959, to cease and desist and to abstain from entering into, or continuing or performing any of the contracts, agreements, or understandings for the carriage of bananas, found herein to be in violation of sections 14 and 16 of the Shipping Act, 1916, as amended;

5 F.M.B.

2. Respondent, within ten (10) days after the date of service of this order, shall offer to its present banana shippers and to all qualified banana shippers, upon a fair and reasonable basis and upon reasonable notice, refrigerated space for the carriage of bananas on respondent's vessels from Ecuador to United States ports for a period of not to exceed two years, said period to begin not later than August 1, 1959, and shall thereafter offer, for periods not to exceed two years, refrigerated space available for such carriage;

3. Respondent shall employ uniform, fair, and reasonable standards in determining the qualifications of applicant shippers, and in exercising its judgment in this regard, respondent shall take into consideration (1) applicant's financial capacity to engage in the banana business on a scale proportionate to the refrigerated space requested, (2) applicant's ability to arrange for the purchase, loading, and stowing of the bananas to be shipped, and (3) applicant's ability to arrange for the discharge of bananas; and to this end, respondent may require applicant shippers to provide verified information sufficient to enable respondent to make the necessary determinations;

4. Respondent be, and it is hereby, notified and required to establish, observe, and enforce just and reasonable regulations and practices relating to, or connected with, its receiving, handling, stowing, transporting, carrying, and discharging of bananas, which regulations and practices may include the following requirements: (a) each shipper shall furnish and maintain as security for performance of all of its obligations under the two-year forward booking a deposit in cash, negotiable securities, or a bond satisfactory to respondent equal to 12½ percent of the total minimum freight charges due under said forward booking, (b) no shipper shall be permitted, without the approval of respondent, to assign the forward booking or otherwise transfer any rights secured by him under said forward booking, (c) the payment by the shipper of dead freight of up to 90 percent of complete utilization of space assigned, (d) loading, stowing, and unloading shall be at the expense and risk of the shipper, respondent to have the right to designate the stevedore or itself to perform the necessary stevedoring at the port of discharge, (e) the treatment as a single shipper those individuals, partnerships, or corporations who are affiliated with each other to the extent of 10 percent or more common ownership;

5. Respondent shall file with the Board (a) copies of the two-year forward bookings entered into hereunder, (b) the regulations and practices adopted by respondent relating to its receiving, handling, stowing, transporting, carrying, and discharging of bananas, and (c) the criteria used by respondent in determining what applicant shippers are qualified;



PHILIP R. CONSOLO ET AL. v. FLOTA MERCANTE GRANCOLOMBIANA 643

6. The proceedings docketed as Nos. 827 and 841 be, and they are hereby, held open for further proceedings on the claims of complainants for reparation, if any; and

7. The proceeding docketed as No. 835 be, and it is hereby, discontinued.

By the Board.

(Sgd.) JAMES L. PIMPER  
*Secretary.*

5 F.M.B.

**Order**

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 10th day of July A.D. 1959

---

No. 827

PHILIP R. CONSOLO

v.

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

---

No. 835

FLOTA MERCANTE GRANCOLOMBIANA, S. A.—Carriage of Bananas from Ecuador to the United States

---

No. 841

BANANA DISTRIBUTORS, INC.

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

---

The order herein dated June 22, 1959 (served July 2, 1959), having provided, among other things, that respondent, within ten days after the service of the order, shall offer to its present banana shippers and to all qualified banana shippers, upon a fair and reasonable basis and upon reasonable notice, refrigerated space for the carriage of bananas on its vessels from Ecuador to United States



ports for a period of not to exceed two years, such period to begin not later than August 1, 1959; and respondent having filed a petition, among other things, to extend the 10-day period, which expires on July 12, 1959, to August 15, 1959; and replies in opposition to such petition having been filed by complainants in Nos. 827 and 841; and the time for all parties to file replies to the petition not expiring, under the Board's Rules of Practice and Procedure, until July 18, 1959; and good cause appearing:

*It is ordered*, That the time within which respondent shall offer refrigerated space to all qualified shippers be, and it is hereby, extended to and including August 1, 1959;

*It is further ordered*, That the time when the contracts for said space shall begin be, and it is hereby, extended to and including August 15, 1959; and

*It is further ordered*, That all other terms and provisions of the said order of June 22, 1959, shall remain unaffected hereby.

By the Board.

JAMES L. PIMPER  
Secretary

---

**Order**

Flota Mercante Grancolombiana, S. A., having filed a petition seeking additional time for compliance of the order herein served July 2, 1959, and replies thereto having been filed by Philip R. Consolo and by Banana Distributors, Inc., and for good cause appearing:

*It is ordered*, That petitioner be, and it is hereby, notified and required to cease and desist and to abstain from entering into, or continuing or performing any of the contracts, agreements, or understandings for the carriage of bananas, found in these proceedings to be in violation of Section 14

and 16 of the Shipping Act, 1916, as amended, not later than September 1, 1959;

*It is further ordered*, That petitioner shall offer, not later than by August 14, 1959, to its present banana shippers and to all qualified banana shippers, upon a fair and reasonable basis and upon reasonable notice, refrigerated space for the carriage of bananas on petitioner's vessels from Ecuador to United States ports for a period of not to exceed two years, said period to begin not later than September 1, 1959, and shall thereafter offer, for periods not to exceed two years, refrigerated space available for such carriage;

*It is further ordered*, That all other terms and provisions of the order served July 2, 1959, shall remain unaffected hereby.

By the Board.

JAMES L. PIMPER  
Secretary

---

**Decision Recommended by C. W. Robinson, Examiner**

Flota Mercante Grancolombiana, S. A., found to be a common carrier of bananas from Ecuador to the Atlantic and Gulf coasts of the United States.

Exclusion by Flota Mercante Grancolombiana, S. A., of complainants from the use of refrigerated space on its vessels for the carriage of bananas from Ecuador to the Atlantic coast of the United States found to be in violation of sections 14 Fourth and 16 First of the Shipping Act, 1916.

Flota Mercante Grancolombiana, S. A., should cancel its existing contracts for the carriage of bananas from Ecuador to the Atlantic and Gulf coasts of the United States.

4

The refrigerated space on the vessels of Flota Mercante Grancolombiana, S. A., operating from Ecuador to the Atlantic and Gulf coasts of the United States, should be prorated on a fair and reasonable basis among existing shippers and all qualified applicants therefor, under forward-booking arrangements of two years.

\* \* \* \* \*

The complaint in No. 827 alleges that the failure of Flota Mercante Grancolombiana, S. A. (Flota), to allocate part of the refrigerated space on its vessels to complainant (Consolo) for the carriage of bananas from Ecuador to Atlantic ports of the United States, while at the same time contracting out all such space to another shipper of bananas, Panama Ecuador Shipping Corporation (Panama Ecuador), results in undue and unreasonable preference and advantage to that shipper and subjects complainant to undue and unreasonable prejudice and disadvantage in relation to such shipper, in violation of section 16 First of the Shipping Act, 1916 (the Act), and in unfair and unjust discrimination against complainant in the matter of cargo space, in violation of section 14 Fourth of the Act, and violates section 15 of the Act and F.M.B. Agreement No. 3302.<sup>1</sup> Complainant in No. 841 (Banana Distributors) makes substantially the same allegations except that it omits the reference to section 15 and Agreement No. 3302. No. 835 is a petition by Flota for a declaratory order as to whether its contracts with banana shippers to Atlantic and Gulf ports must be canceled in view of the Board's ruling in *Banana Distributors, Inc. v. Grace Line Inc.*, 5 F.M.B. 278 (1957);<sup>2</sup> these shippers have threatened suit if Flota terminates their contracts.

<sup>1</sup> Flota is a member of Association of West Coast Steamship Companies (F.M.B. Agreement No. 3320), an association of common carriers transporting cargo from Ecuador and Pacific ports of Colombia to, among other places, Atlantic and Gulf ports of the United States.

<sup>2</sup> Now under review by the Circuit Court of Appeals for the Second Circuit (No. 24,872, argued December 5, 1958).

The three proceedings were consolidated for hearing. Complainants intervened in No. 835 but Banana Distributors did not file a brief. Panama Ecuador intervened in all three proceedings. Newark Banana Supply intervened in No. 841 but did not participate in the hearing or file a brief. Public Counsel intervened in No. 827. Although reparation is sought by complainants and a good deal of the early part of the hearing was devoted to that phase, the examiner deferred further action thereon, upon complainants' motion, pending the outcome of the proceedings on their merits.

#### PRELIMINARY FACTS

Flota was organized by the Governments of Colombia, Ecuador, and Venezuela (Venezuela no longer is part owner). It operates various common-carrier services, the two here involved being between the west coast of South America (exclusive of Chile) and United States Atlantic ports and between the west coast of South America (exclusive of Chile) and United States Gulf ports.

Between February 1950 and February 1954, Flota transported bananas on a sporadic and trial basis for three shippers from Ecuador to Atlantic ports, all under special agreements but never for more than one shipper at a time. In June 1952 it opened negotiations with Leonard Morey and Samuel Staff, of New York, for the exclusive use of the No. 3 hold of its vessels (the No. 3 hold is the only refrigerated space on the vessels) for the carriage of bananas from Ecuador. On July 20, 1955, a contract to this end was made between the parties for two years, the bananas to be unloaded at Philadelphia, Pennsylvania. The contract was later assigned to Exportadora de Productos Ecuatorianas, S. A., an Ecuadorian corporation, and was thereafter assigned to intervener Panama Ecuador. Exportadora purchases the fruit and sells it to Ecuadorian Fruit Import Corporation, which in turn sells it in the

United States. Panama Ecuador is the transporting company. All of the companies here mentioned are owned by Morey and Staff. The contract was renewed for three years on May 22, 1957, effective upon its expiration on July 19, 1957.

An agreement somewhat similar to that with Morey and Staff was executed by Flota with Grand Shipping, Inc., on July 3, 1957, effective June 1, 1957, for the refrigerated space in the 'tween deck of No. 3 hold on Flota's vessels from Ecuador to Galveston, Texas, for a period of one year, subject to renewal for a like term. Because of the pending petition for declaratory order, the contract was renewed for six months instead of a year.

Consolo is an experienced and qualified banana shipper. His first effort to secure space to the Atlantic coast on Flota's vessels was late in 1954, but no agreement was reached. In the spring of 1955 there were further discussions and Consolo inspected the refrigerated space on one vessel. A fixed price was set by Flota for the space, but since Consolo was of the opinion that the height of the lower hold was too great to permit the proper stowage of bananas,<sup>3</sup> he made an offer to take the entire space if the rate for the lower hold was reduced; in the alternative, he offered to contract for the upper two decks only. Both offers were rejected. In July of 1955, as previously seen, Flota leased the space to Morey and Staff. Consolo again inquired about space possibly late in 1955 and also in 1956, but was told that all space was under contract. In February 1957, by letter, Flota asked Consolo to make a bid for the space, and though this was done, the offer was refused. In the fall of 1957 Consolo made several other unsuccessful attempts to secure space.

<sup>3</sup> It is generally agreed that the ideal stowage of bananas calls for two stems upright and one stem flat. The lower hold of the Flota vessels in operation at the time of the negotiations was such that three stems could be stowed upright, but this was likely to cause damage to the bottom stems. Thus, if the shipper stowed two high and one flat he would be paying for space not utilized.

Beginning in August 1957, Banana Distributors, an experienced and qualified banana shipper, unsuccessfully sought space on Flota's Atlantic coast vessels. Counsel for the company stated at the hearing that the company had recently applied for space on the Gulf vessels also, but the record contains nothing more about such request. The petition of intervention filed by Newark Banana Supply states that petitioner had requested space to Philadelphia by letter to Flota dated October 14, 1957; as Newark did not participate in the hearing, however, the record contains no evidence as to its operations or its qualifications as a banana shipper. Other potential shippers of bananas have sought space to Atlantic and/or Gulf ports since June 1957, but Flota has not inquired as to their financial responsibility or as to their qualifications as banana shippers.

#### PRIMARY FACTS

*In general.* At least prior to 1955, Flota vessels were not considered desirable banana carriers because (1) of irregular sailings and arrivals, (2) unsatisfactory refrigeration facilities, and (3) too much height in the lower hold. Only two vessels were utilized in the Atlantic coast service up to 1953; in that year three more were added. Two of the vessels subsequently were withdrawn and placed in Flota's Pacific coast service, but were brought back to the Atlantic when the contract was made with Morey and Staff in July 1955. The refrigerated capacities of the five vessels covered by the contract ranged between 27,600 cubic feet and 62,115 cubic feet, and the vessels had a 35-day turnaround with weekly sailings from New York, generally on Friday. In December 1955 the Atlantic service was extended to Peru and a sixth vessel was added to maintain weekly service.

A recent building program has resulted in five new vessels being placed in the Atlantic service since the summer

of 1957; a sixth vessel is expected sometime early in 1959. The speed of the new vessels is several knots greater than that of the older ones, and each has about 55,000 cubic feet of refrigerated space (estimated slightly higher by Panama Ecuador's refrigeration expert). The evidence is convincing that the service has improved and become more reliable since the advent of the new vessels.

Bananas are loaded at Guayaquil (principally) and Puerto Bolivar, Ecuador, whereafter the vessel calls at Buenaventura, Colombia, for large quantities of coffee. As amended, the contract with Morey and Staff permits the vessel as much as 60 hours at intermediate ports in South America after bananas are loaded (according to Panama Ecuador's general manager, the vessels often spend 70-80 hours at such ports). From Buenaventura the vessel proceeds direct to Philadelphia for the discharge of bananas, thence to Baltimore and New York. Transit time from Guayaquil to Philadelphia is about 11 days; 12 days are allowed under the contract.

Flota and Grace Line Inc. are the only common carriers operating regularly between the west coast of South America and the Atlantic coast of the United States which carry bananas. Complainants and Panama Ecuador ship bananas on Grace's vessels. The two lines perform the same general type of service and are competitive with each other. Whereas all of Flota's vessels are freighters, operating on a weekly schedule, bananas are carried on Grace's passenger as well as freight vessels. As previously noted, only the No. 3 hold of the Flota vessels is refrigerated. This hold has three levels: upper 'tween deck, lower 'tween deck, and lower hold. The square of each hatch is closed off by means of three insulated plugs weighing approximately 450 pounds each, on top of which are placed hatch covers several inches thick. Grace freight vessels have two refrigerated holds and its passenger vessels have three refrigerated holds, but each hold has two



decks only. Furthermore, heavy insulated plugs are not used in the square of the hatch of the Grace vessels.

Bananas are carried under Flota's ordinary bill of lading, upon which is stamped a clause subjecting the transportation to the special contracts with the shippers. Loading and unloading are performed by the shippers and at their expense.

*Refrigeration facilities.* The record shows quite clearly that there are substantial differences in the refrigeration facilities of Flota and Grace vessels, so much so that Panama Ecuador's refrigeration expert has inspected 107 unloadings of Flota vessels and made several trips on the vessels from Ecuador to Philadelphia in order to check the outturn of the fruit and to survey and analyze the equipment and its operation. After his first few visits to the Grace vessels, which discharge at New York, the witness did not find it necessary to make further inspections.

The refrigerated hold of the Flota vessels was designed primarily to carry frozen cargo. The vessels employ a chill water system, using brine refrigerated by compressors and circulated through coils in each deck level, each deck thus being cooled independently. A reversible fan on each deck distributes the chilled air through a series of ducts on the bulkhead of that deck. In order to balance out the temperatures in the different areas, the direction of the air must be changed every five hours for the first two days after loading is completed, every day for the next five days, then every other day. There is one mechanical exhaust fan located near the ceiling, which takes care of all three decks.

The Flota system employs goosenecks for the entry of fresh air, one located on each side of the vessel. When the fan is going the gooseneck on the opposite side must be closed manually else the cold air be expelled through the latter instead of going through the hold. Starting the fan and shutting down the damper involve considerable work.



When the vacuum built up in the deck is broken, uncooled air comes in and permeates the deck.

The refrigerated holds of the Grace vessels were designed primarily to carry bananas. The refrigeration system is one of direct expansion coils, using Freon gas, and has about the same efficiency, proportionately, as that of the Flota vessels. The comparison ends at that point, however. Grace vessels have two centrifugal mechanical blowers, one forcing cool air through ducts to the port side and one doing the same on the starboard side, the air coming in under the floor boards. The exhaust air is carried out by gravity, the exhaust being located in the lower part of the hold where it can best take care of the gases exuded from the fruit. The system is not affected by door openings or leakage of air.

Grace vessels have a refrigeration engineer and usually two assistants. In contrast, Flota vessels usually have no separate refrigeration engineer, in which case the chief engineer is responsible for the proper working of the refrigerating system. Furthermore, the vessel's personnel is changed periodically, and as the language in use on board usually is Spanish or Italian, difficulties frequently arise in the operation of the system according to the shipper's instructions.

The following table compares the pertinent characteristics of Flota and Grace vessels:

	Flota	Grace
Air supply	20,000 cubic feet per minute	40,000 c.f.m.
Air change per cubic volume per hour	5.3 times	9.2 times
Fresh air	2,000 cubic feet per minute	4,000-6,000 c.f.m.
Horsepower	45-50	100

*Loading.* Bananas are loaded on Flota and Grace vessels in much the same general manner.<sup>4</sup> The vessels of each are loaded from anchorage instead of at piers. There is an opening (sideport) on each side of the Flota vessels leading into the upper 'tween deck of the refrigerated hold. A pontoon is secured to the vessel under each sideport and a ramp is positioned between the pontoon and the opening. Banana-laden barges, of different heights and containing from 800 to 4,000 stems each, tie up alongside the pontoon and stevedores carry the individual stems on their shoulders up the ramp, into the top deck, thence down to the lower decks by means of other ramps placed in the square of each hatch. The stevedores return to the barge via the same ramp whereas on the Grace vessels they use a paralleling ramp.

The exterior and the interior ramps on Flota are at a steeper angle than those on Grace because of the height of the sideports from the waterline and the height of the decks. Furthermore, the sideports on Flota are lower and narrower than those on Grace. Loading Grace vessels is somewhat more simple than loading Flota vessels inasmuch as the former have only two decks as contrasted with the three decks on the Flota vessels, as previously stated.

In the case of Panama Ecuador on Flota vessels, full-scale loading by seven to 10 teams of stackers commences in the lower hold. At the same time, jumbo stems to the number of about 1,000 to every 12,000-13,000 stems on the individual vessel, which bring premium prices in the United States, are selected by fruit sizers at the sideports and loaded by two teams of stackers in the upper 'tween deck, where damage is least likely to occur. Because of the presence of the large refrigerator hatch plugs, the hatch covers, floor boards, stanchions, and bin boards,<sup>5</sup> there is a

---

<sup>4</sup> For more details as to the production and loading of bananas, see *Banana Distributors*, *supra*, particularly the examiner's recommended decision.

<sup>5</sup> The decks are fitted for stanchions, into which boards are inserted to form bins. This permits separation of the fruit and ensures better stowage.

relatively small area in the lower 'tween deck that can be loaded when loading starts in the lower hold, hence loading of the lower 'tween deck generally does not proceed in volume until loading of the lower hold begins to slow down.

Some of the ramps to the lower hold are removed as it begins to fill, and stems then are stowed in the area vacated. When all but the square of the hatch has been filled, the remaining ramps are pulled up and stems are passed by hand to the dwindling stackers to fill the unoccupied space (this hand process reduces the loading speed to about 10 percent of the normal rate). The hatch plugs and covers are then put in place, sealing the lower hold. From this point the finishing of the lower 'tween deck commences. Before loading of the lower hold is completed the loading of the upper 'tween deck is accelerated; completion of the hold is accomplished when the lower 'tween deck is finished and sealed off.

*Unloading.* Unloading of the Flota vessels at Philadelphia is performed in the inverse order of loading. As the vessel is moored portside to the pier, unloading is through that side of the vessel only. The fruit nearest the sideport comes out first, whereafter a conveyor belt is placed in the hold and gradually worked back to the forward square of the hatch. As the square is cleared and the hatch plugs and covers are removed, the bananas in the square of the hatch in the lower 'tween deck are removed by hooks and ship's tackle attached to strings already affixed to the stems. When the plugs and covers are removed into the lower hold, the same procedure is there followed. Once the square of that hatch is cleared, a pocket-type elevator is lowered into the lower hold. At this stage about 80 percent of the fruit on the upper 'tween deck has been removed. By the time the elevator has been rigged, tested, and put to work, the upper 'tween deck is empty, whereupon teams of stevedores begin to unload the lower two decks. The use of conveyor belts between

the decks is not feasible on account of the angle of incline, hence the utilization of the pocket elevator.

#### DISCUSSION AND CONCLUSIONS

Flota contends that it is not a common carrier as to bananas, that its contracts with shippers are valid, and that the differences in the physical characteristics of the Grace vessels and its vessels are so great as to cause unreasonable delay in loading if there were more than one shipper of bananas. Panama Ecuador argues that, whether or not Flota be held to be a common carrier as to bananas, its contract with Flota is valid because it is impossible for more than one shipper of bananas to utilize the space at any one time; use by more than one shipper would result in confusion and even chaos, it is declared. Public Counsel maintains that Flota has violated sections 14 Fourth and 16 First of the Act in refusing to allocate space to complainants, and that Flota should be required to cancel its contracts with shippers and make its refrigerated space available to all qualified shippers of bananas under reasonable conditions.

In the absence of different underlying facts, the decisions of the Board in *Philip R. Consolo v. Grace Line Inc.*, 4 F.M.B. 293 (1953), and *Banana Distributors, supra*, control in the present proceedings.

*Loading and unloading time.* Flota's witness stated that bananas are not as important to the company as coffee, that the company's southbound service is more important revenue-wise and traffic-wise than the northbound service, and that a material increase in the time of loading or unloading would interfere substantially with the southbound service. He added that any great delay might cause the company to abandon the carriage of bananas so as not to jeopardize the southbound service. He also stated, however, that the company would not object to more than one shipper if the loading and unloading time were not

increased materially, and that the company would be willing to give it a try if the Board so ordered.

All parties agree that, in view of the perishable nature of bananas, the fruit must be loaded, transported, and distributed at the earliest possible time following cutting from the tree. Panama Ecuador loads as many as 15,000 stems on a Flota vessel and usually completes loading in from 13½ to 15 hours, the contract allowing a maximum of 15 hours.<sup>6</sup> Panama Ecuador's general manager believes that under optimum conditions the over-all loading time would be increased by 7 to 12 hours if three shippers shared the space, from 10 to 15 hours if there were six shippers, and up to 50 hours if 10 shippers were involved. Consolo estimated a delay of only one hour if there were six shippers, and Banana Distributors' secretary-treasurer thought there would be a delay of 2 hours with six shippers.

It is quite evident that one shipper can make the best use of the three decks since he can place teams of stackers wherever space is available at a particular time. It does not follow necessarily, however, that the presence of more than one shipper would so stall loading as to cause the vessel to be detained unreasonably.

The more shippers there are the more pontoons and barges would be involved in the loading. This would mean the shifting of pontoons and barges as the loading progresses. There is no contention that the withdrawal of one pontoon and the substitution of another would cause a delay of more than a few minutes. Even this delay could be eliminated by an agreement among shippers to share the same pontoon on each side of the vessel, a step which would expedite the loading and be of advantage to all shippers. Panama Ecuador usually has two or more barges tied up at each pontoon; if this can be done, there

---

<sup>6</sup> When Grace opened its refrigerated space to all qualified shippers of bananas following the Board's order to that effect, it did not increase the existing permissible loading time beyond 12 hours.

would seem to be no reason why the barges of other shippers could not be tied alongside, it being remembered that the addition of other shippers would reduce the number of Panama Ecuador's barges proportionately. Thus, as the loading rate of one shipper tapers off for any reason, the fruit of another could be moved. Furthermore, there could be an agreement among shippers to use the same stevedores and supervisory personnel, to the advantage of all shippers.

There remains, of course, the problem of getting the bananas of a particular shipper into the space allocated to him. How can the stevedores know whose fruit they are carrying? Several answers readily come to mind. In the first place, as every stem presently is coated with a preparation to retard rot, the preparation could be colored in order to identify the owner. Thus, the checker at the sideport would designate the space where the particular stems are to be stowed. Secondly, the strings attached to the stems likewise could be of different colors. Finally, a small tag of appropriate color or other means of identification could be affixed to the stem. The foregoing suggestions are practical, inexpensive, and easy of application. There may be other means of easy identification which would suggest themselves to those intimately familiar with the ramifications of the banana business.

Having disposed of the loading situation up to the point of the sideports, the actual stowing of the fruit in the three decks must be considered. One of the points made by Panama Ecuador is that the individual shipper would have to remove his own internal ramps upon completion of the loading of his area, and that this would cause considerable delay because of the size of the ramps. This removal by the individual shipper could be dispensed with, however, as in the case of the exterior ramps, by all shippers agreeing to use the same ramps, which would not be removed until a particular deck was nearly completely filled. Since

the plugs and other gear present the same problems and occupy the same space, irrespective of the number of shippers, its presence should not affect materially the loading by more than one shipper.

It is true that the sharing of the space with other shippers would take away from Panama Ecuador the opportunity it now has of loading jumbo stems in the upper 'tween deck while loading of the ordinary-size stems is taking place in one or both of the other decks, but that result, standing alone, would not warrant the exclusion of other qualified shippers from Flota's vessels.

It would appear that Panama Ecuador's general manager is unduly alarmed at the prospect of more than one shipper sharing Flota's refrigerated space. The use of the space by more than one shipper, if properly coordinated and carried out in good faith, should entail no more than five hours additional time in the loading process. As the unloading at Philadelphia must be accomplished by means of a pocket elevator, as already pointed out, there should be virtually no difference in the unloading time simply because the bananas belong to more than one consignee. Assuming the stems to have been identified at the time of loading, and assuming that the same stevedores are used by all consignees for the unloading, the fruit should flow in an orderly fashion to the truck or other facility of the correct consignee (facilities for trucks are greater at Philadelphia than at the Grace pier in New York).

Multiple loading and unloading probably would cause some difficulty and confusion at first, but there should be an honest and sincere attempt by all shippers to smooth out the rough spots in a system that should prove to be wholly workable. The mere specter of a 3-deck hold should not be allowed to defeat the ingenuity of practical men well-versed in their business. While the problems attendant upon the use of the Flota facilities may be more accentuated than those encountered by the shippers of bananas



on the Grace vessels (see *Banana Distributors, supra*), there has been no indication that the sharing of the space on the Grace vessels has been impractical.

As Flota's vessels, under the present contract with Morey and Staff, are privileged to spend 60 hours at intermediate South American ports after loading bananas, as the accession to the service early in 1959 of the last of Flota's new vessels will give the company a well-rounded and fast fleet, and as Flota's transit time now is about the same as that of Grace, it is concluded that the additional maximum loading time of five hours for bananas is not likely to affect Flota's schedules to any appreciable extent.

*Cooling facilities.* The internal (pulp) temperature of bananas rises as they await loading. To retard ripening as much as possible, the temperature of the vessel's hold must be brought down as quickly as possible to 52-53 degrees. When the hold is opened for loading the temperature naturally climbs; it follows, of course, that the longer the loading period the more nearly the hold temperature approaches the outside temperature (the weather in the loading area of Ecuador ranges from warm to very hot, depending upon the season of the year), and the longer it takes the equipment to bring the hold temperature down to the proper level. The holds of the Grace vessels are ready for loading at the moment the barges come alongside. The same is not true as to the Flota vessels, which have carried general cargo southbound in the No. 3 hold; the refrigerator plugs and the hatch covers must be removed and the stanchions and the bin boards must be set up before loading can begin.

Panama Ecuador's refrigeration expert agrees that the Flota cooling system is generally satisfactory for the carriage of bananas, even though not as efficient as Grace's. In Grace it takes from 12 to 24 hours to reduce the hold temperature to the desired point; in Flota, it averages approximately 40 hours. Pulp temperatures on Grace can be satisfied in 23 to 24 hours; on Flota, 2 to 2½ days. The



witness is of the opinion that on the Flota vessels it would take 2 additional hours of cooling time for each additional hour of loading time beyond the 15-hour period now required by Panama Ecuador. In this he is supported by Panama Ecuador's general manager. There was no countervailing testimony. The estimate given does not seem extravagant.

Panama Ecuador contends that the quality of the bananas carried on Flota's vessels would be affected, and perhaps prevent a successful importing business, if the loading time were increased beyond 15 hours. It is hard to believe, however, that a maximum of 5 hours additional loading time would *seriously* affect the outturn. Under all the circumstances, it is found that such increased loading time would not jeopardize the carriage of bananas on Flota's vessels.<sup>7</sup>

*Space arrangements.* In *Banana Distributors, supra*, the Board said at page 286:

In view of the foregoing, the Board adopts the examiner's recommendation that Grace prorate its reefer space, upon a fair and reasonable basis, among existing shippers and complainants and their supporting interveners, under forward-booking arrangements of 2 years. To this end, Grace shall cancel its existing contracts with three banana shippers and offer reefer space, upon reasonable notice, fairly and equitably, in

---

<sup>7</sup> The evidence as to Flota's Gulf service is rather meager (the Gulf shipper did not participate in the hearing). Although the four Gulf vessels are older and slower than those used in the Atlantic service, and although the refrigeration and ventilation on the former are not so good as on the latter, the transit time to Galveston is from one to two days shorter than to Philadelphia. Sailings are about 10 days apart. Bananas are unloaded at the consignee's pier; they never have been unloaded at a public pier. Some general cargo is carried but not on every voyage; this is unloaded at another pier. Flota's witness stated that to shift to public piers to unload bananas for shippers other than the present one "would be killing." No good reason appears why Flota's Gulf vessels should not carry bananas for the general public rather than for one particular shipper; in such case, unloading of all the fruit could be accomplished at one public pier.

two-year forwarding-booking arrangements, to all qualified shippers.

Grace may require prospective shippers in this trade to post a bond covering the space assigned, and may otherwise establish reasonable rules covering dead freight, inspection, and loading and stowing, which prospective shippers must meet in order to qualify as users of space.

At the end of any forward-booking period, in the event that additional qualified importers desire reefer space, it will be incumbent upon respondent to reallocate space to existing importers and the new applicants upon a fair and reasonable basis.

Consolo urges here, as did one of the parties unsuccessfully in *Banana Distributors*, that the existing shipper be deferred in the assignment of space "because of past benefits accruing to it resulting from the fact that it monopolized the space during the past three and a half years in flagrant disregard of the law." No good reason appears why the general directives of the Board in *Banana Distributors* should not be followed in the present proceedings.

*Section 15 of the Act.* One of Consolo's arguments, as previously seen, is that Flota's failure to grant him space violates section 15 of the Act and F.M.B. Agreement No. 3302. Association of West Coast Steamship Companies is not a party to the present proceedings. In view of the conclusions herein reached, it is unnecessary to pursue the section-15 issue. The same question was raised in *Banana Distributors* but no action was taken on it by the Board.

#### RECOMMENDATIONS

The Board should find:

1. That Flota is a common carrier of bananas from Ecuador to the Atlantic and Gulf coasts of the United States;

2. That Flota's exclusion of Consolo and Banana Distributors from the use of refrigerated space on its vessels for the carriage of bananas from Ecuador to the Atlantic coast of the United States results in violation of section 14 Fourth and 16 First of the Act (the record contains no evidence upon which a finding can be made as to the operations and qualifications of intervener Newark Banana Supply);

3. That Flota should cancel its existing contracts for the carriage of bananas from Ecuador to the Atlantic and Gulf coasts of the United States; and

4. That the refrigerated space on Flota's vessels operating from Ecuador to the Atlantic and Gulf coasts of the United States should be prorated on a fair and reasonable basis among existing shippers and all qualified applicants therefor, under forward-booking arrangements of two years.

An appropriate order should be entered, but the record should be held open to give Flota an opportunity to accomplish the Board's directives.

---

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,330

FLOTA MERCANTE GRANCOLOMBIANA, S. A., *Petitioner,*

v.

FEDERAL MARITIME BOARD and UNITED STATES  
OF AMERICA, *Respondents.*

**Prehearing Stipulation**

Counsel for all parties herein concur in the following prehearing stipulation.

## I. *Issues.*

The issue, as stated by petitioner, is as follows:

“Whether the Federal Maritime Board properly concluded that petitioner, in denying to complainants reefer space for the carriage of bananas, and in granting space to other persons, pursuant to prior contractual arrangements, violated Section 14 Fourth and Section 16 First, Shipping Act, 1916.”

The issue, as stated by respondents and intervener Philip R. Consolo, is as follows:

“Has the Federal Maritime Board jurisdiction to find, and did it properly find that a steamship line in foreign commerce which

(a) is a common carrier, and

(b) regularly carries bananas in its refrigerated facilities may not commit its banana-carrying facilities under long term contracts to a single banana importer, to the exclusion of other banana importers.”

## II. *Schedule for filing of briefs and joint appendix.*

### *Typewritten Briefs*

Petitioner's brief, April 17, 1961.

Respondents' and Intervener's briefs, May 17, 1961.

Petitioner's reply brief, June 12, 1961.

### *Joint Appendix*

Designations by petitioner, June 21, 1961.

Counterdesignations, June 28, 1961.

Meeting of counsel for final counterdesignations, in reply, and arrangements for printing, July 3, 1961.

Filing of printed joint appendix, July 13, 1961.

*Printed Briefs*

All briefs to be filed in printed form, July 24, 1961.

It is agreed the above schedule will be suspended if the Court grants a stay upon petitioner's motion.

February 17, 1961.

J. ALTON BOYER

J. Alton Boyer

*Attorney for Petitioner,*

*Flota Mercante*

*Grancolombiana, S. A.*

ROBERT E. MITCHELL

Robert E. Mitchell

*Assistant General Counsel,*

*Federal Maritime Board*

IRWIN A. SEIBEL

Irwin A. Seibel

*Attorney,*

*Department of Justice*

GEORGE F. GALLAND

George F. Galland

*Attorney for Intervener,*

*Philip R. Consolo*

---

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1960

No. 15,330

FLOTA MERCANTE GRANCOLOMBIANA, S. A., *Petitioner,*

v.

FEDERAL MARITIME BOARD and the UNITED STATES,  
*Respondents,*

PHILIP R. CONSOLO, *Intervenor.*

Before: BASTIAN, *Circuit Judge*, in Chambers.

**Order**

Counsel for the parties in the above-entitled case having submitted their stipulation dated February 17, 1961, pur-

suant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is hereby approved, and it is

ORDERED that the stipulation dated February 17, 1961, shall control further proceedings in this case and that the stipulation and this order shall be printed in the joint appendix.

Dated: February 20, 1961.

---

BEFORE THE  
FEDERAL MARITIME BOARD

In re the Petition of  
FLOTA MERCANTE GRANCOLOMBIANA, S. A.  
for Issuance of a Declaratory Order

**Petition**

Pursuant to Rules 5 (i) and 10 of the Rules of Practice and Procedure of the Federal Maritime Board, Flota Mercante Grancolombiana, S. A. hereby files this petition requesting the Board to issue a declaratory order, after a full hearing, in order to terminate a controversy and to remove uncertainty which has arisen with reference to the validity of certain contracts heretofore entered into by Flota Mercante Grancolombiana, S. A. for the carriage of bananas between Ecuadorian and United States Gulf and Atlantic coast ports.

The Board is authorized and empowered by virtue of Section 5 (d) of the Administrative Procedure Act (60 Stat. 239, 5 U. S. C. A. § 1004 (d) (1946) to initiate such proceedings and issue appropriate orders. In addition thereto, since the subject matter presented hereby involves assertions of undue discrimination or preferences, it comes

within the scope of Sections 14, 16 and 22 of the Shipping Act of 1916 and accordingly within the Board's power and authority to hear the same.

Petitioner from August, 1949 to July, 1955 has sporadically carried bananas on its vessels for a number of shippers from Ecuadorian to United States ports. During the major portion of the time within the period encompassed by the dates hereinbefore set forth, the refrigerated spaces of the vessels owned and operated by the Petitioner were not used because there was no demand for such space.

At the present time Petitioner has contracts pending with Panama Ecuador Shipping Corporation and Grand Shipping Inc. under which it has agreed to furnish the said shippers with all of the refrigerated space available on its vessels. These contracts cover the carriage of bananas from Ecuadorian ports to United States Gulf and Atlantic coast ports. The contract for the carriage of bananas to the Gulf ports will expire on May 31, 1958 while on the other hand the contract for the carriage of bananas to the Atlantic coast ports expires on July 19, 1960. The aforesaid contracts were entered into with the shippers after extended negotiations and after the shippers had agreed to post sufficient guarantees demanded by Petitioner in order to insure to it that the shippers would fulfill all of their obligations under the said contracts.

Subsequent to the rulings of this Board in *Banana Distributors, Inc. v. Grace Line, Inc.*, Docket No. 771 and *Arthur Schwartz v. Grace Line, Inc.*, Docket No. 775, decided April 29, 1957, numerous firms and individuals advised the Petitioner that they desired that refrigerated space on vessels owned by Petitioner be made available to them for the transportation of bananas between Ecuadorian and United States ports. These prospective shippers have been advised by Petitioner that all of the available space aboard its vessels, suitable for carrying bananas from

Ecuadorian to United States ports, is under contract to two shippers and that the Petitioner would consider their applications for an allotment of space upon the termination of said contracts.

Petitioner has been advised by numerous prospective shippers or their attorneys that in their opinion the rulings of *Banana Distributors, Inc. v. Grace Line, Inc.* and *Arthur Schwartz v. Grace Line, Inc.*, supra, compel the Petitioner to rescind and cancel its present contracts and to pro-rate the available space among qualified shippers. The present shippers under contract with the Petitioner have been advised of the demands made upon the Petitioner by the prospective shippers and they in turn have advised the Petitioner that in the event Petitioner cancels said contracts, that it will subject itself to a suit or suits for breach of contract. The prospective shippers state that claims for reparations will be made unless Petitioner allocates a portion of the refrigerated space to them.

In both *Banana Distributors, Inc. v. Grace Line, Inc.* and *Arthur Schwartz v. Grace Line, Inc.*, supra, neither the present shippers of Petitioner nor the Petitioner were made a party thereto.

The demands on one hand of the present shippers of Petitioner that it adhere to its contracts with them and the demands on the other hand of the prospective shippers requesting Petitioner to terminate forthwith its present contracts and allocate the refrigerated space of its vessels, places the Petitioner squarely in the middle of a controversy which has created an uncertainty involving the rights of the Petitioner with relation to the demand made upon it by its shippers under the existing contracts wherein they claim that the Petitioner cannot cancel the contracts without breaching them and the demands of the prospective shippers requesting Petitioner to adhere to the *Banana Distributors, Inc. v. Grace*



*Line, Inc. and Arthur Schwartz v. Grace Line, Inc.*, supra, rulings. This controversy requires clarification of the position of Petitioner in the light of the present contracts and the *Grace Line* rulings.

Petitioner submits that unless the issues raised hereby are determined by the Board, it will be subjected to suits for damages and claims for reparations by either present or prospective shippers. The controversy involves substantial rights of Petitioner which require a determination thereof so that all uncertainties created by the *Grace Line* rulings with regard to the contracts entered into by Petitioner with its present shippers will be clarified. The issue involved in the controversy, which have given rise to the uncertainty and which must be determined by this Board after a full hearing and upon consideration of all of the evidence, is as follows:

Whether Petitioner is required under the rulings of the Federal Maritime Board in *Banana Distributors, Inc. v. Grace Line, Inc.*, Docket No. 771, and *Arthur Schwartz v. Grace Line, Inc.*, Docket No. 775, to cancel the contracts which it has with its present shippers for the carriage of bananas from Ecuadorian ports to United States ports.

WHEREFORE, it is respectfully prayed by Flota Mercante Grancolombiana, S. A., that a declaratory order issue after a full hearing determining the validity of its present contracts.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

By: ALVARO DIAZ S.  
Managing Director

State of New York,  
County of New York—ss.:

ALVARO DIAZ S., being first duly sworn on oath, deposes and says that he is Managing Director of the Petitioner herein and is the person who signed the foregoing Petition; that he has read the Petition and that the facts set forth without qualification are true and that the facts stated thereupon upon information received from others affiant believes to be true.

ALVARO DIAZ S.

Sworn to before me this  
30th day of October, 1957.

LENORE SCALLEY

Notary Public, State of New York

No. 41-8778800

Qualified in Queens County

Cert. filed in New York Co. Clk.

Commission Expires March 30, 1958

---

BEFORE THE FEDERAL MARITIME BOARD

Docket No. 827

PHILIP R. CONSOLO, *Complainant*,

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

PANAMA ECUADOR SHIPPING CORPORATION, *Respondents*.

**Complaint**

1. Complainant is an individual, having his principal office in Miami, Florida, engaged in the business of importing bananas into the United States via the Atlantic Coast from various foreign countries, including Ecuador.

2. Respondent Flota Mercante Grancolombiana, S. A. (hereafter called Grancolombiana) is a corporation or-

ganized under the laws of Colombia, having its principal office at Apartado Aereo 44-82, Bogota, Colombia. It is represented in the United States by Transportadora Grancolombiana Ltda., as general agent. Such agent maintains an office at 52 Wall Street, New York 5, N. Y. Grancolombiana is a common carrier by water of freight in the foreign commerce of the United States in the trade from Ecuador to ports on the Atlantic Coast of the United States. As such common carrier, Grancolombiana is a member of the Association of West Coast Steamship Companies (hereafter called the Conference), organized under Agreement 3302, which agreement, with amendments thereto, was approved by the predecessors of this Board pursuant to section 15 of the Shipping Act, 1916.

3. Respondent Panama Ecuador Shipping Corporation is a corporation which presently has a contract with Respondent Grancolombiana for all of the refrigerated space suitable for bananas on Grancolombiana's vessels in service from Ecuador to United States Atlantic ports. The place of incorporation and the address of Panama Ecuador Shipping Corporation are unknown to Complainant but Complainant believes that communications addressed to it in care of Grancolombiana or its general agent will be duly delivered.

4. The operations of Grancolombiana as set forth in paragraph 2 above constitute a common carrier liner service.

5. Grancolombiana's service from Ecuador to United States Atlantic ports has operated since 1955, and on information and belief still operates, on approximately a weekly schedule, with vessels which have refrigerated chambers suitable for the transportation of bananas. Such vessels since 1955 have transported bananas from Ecuador to the port of Philadelphia. The refrigerated space suitable for bananas in Grancolombiana's vessels in Ecuador-U.S. Atlantic service ranges from approximately 27,000

cubic feet to approximately 62,000 cubic feet per vessel and averages approximately 50,000 cubic feet per week.

6. Complainant at all times during the period of two years preceding the date of this complaint has been in a position to purchase and has been continuously engaged in purchasing bananas from growers in Ecuador, and has been in a position to sell and has been continuously engaged in selling such bananas in the United States. On various occasions between 1955 and the date of this complaint, Complainant has demanded that Grancolombiana make available to Complainant refrigerated space suitable for bananas in the vessels operated by Grancolombiana from Ecuador to United States Atlantic ports. Initially, Complainant requested all of such space because Grancolombiana offered it only as a unit. After this Board's decision in *Banana Distributors, Inc. v. Grace Line Inc.*, Complainant offered to contract for less than the whole of such space, on the basis of a fair and reasonable allocation. Grancolombiana has failed to comply in whole or in part with Complainant's demands. Moreover, after Complainant had submitted such demands, Grancolombiana contracted all of its refrigerated space in its service from Ecuador to the Atlantic Coast of the United States to another applicant, namely Respondent Panama Ecuador Shipping Corporation.

7. Grancolombiana's refusal and failure to allot refrigerated space to Complainant was and is based upon the fact that the whole of such space has, as aforesaid, been contracted for a period of approximately two years to the Panama Ecuador Shipping Corporation, a competitor of Complainant.

8. Grancolombiana's refusal and failure to allot refrigerated space to Complainant, as aforesaid, confers an undue and unreasonable preference and advantage upon the aforementioned shipper to whom Grancolombiana has purported to sell the whole of its refrigerated space in the

trade from Ecuador to United States Atlantic ports, and subjects Complainant to undue and unreasonable prejudice and disadvantage in relation to such shippers, all in violation of paragraph First of section 16 of the Shipping Act, 1916.

9. Grancolombiana's allotment of the whole of its refrigerated space to the shipper aforementioned, and its consequent refusal of any portion of such space to Complainant, constitutes unfair treatment of and unjust discrimination against Complainant in the matter of cargo space accommodations and other facilities (particularly refrigeration facilities), due regard being had for the proper loading of Grancolombiana's vessels and the tonnage available to such vessels, in violation of paragraph Fourth of section 14 of the Shipping Act, 1916.

10. Under Article 1 of Agreement No. 3302, the Conference has jurisdiction over and deals with "the transportation of northbound cargo from Pacific ports of Colombia or Ecuador" to various destinations including United States ports on the Atlantic coast. The member lines of said Conference, including Grancolombiana, are defined by the same article as common carriers by water. As such common carriers, the Conference members, including Grancolombiana, are obliged to serve all shippers, including shippers of bananas, fairly and with freedom from unjust discrimination. In refusing cargo space accommodations to Complainant in accordance with its obligations as a common carrier, Grancolombiana is acting in violation of section 15 of the Shipping Act, 1916, and in violation of Agreement No. 3302 as amended.

11. By reason of the facts hereinabove set forth, Complainant has been unlawfully deprived of the opportunity to conduct the business of importing bananas from Ecuador to the United States on Respondent's vessels and has lost profits incident thereto during two years prior to the date of this complaint, in the sum of \$600,000.00.

WHEREFORE, Complainant requests that an order be issued by the Board (a) adjudging the aforementioned contracts between Grancolombiana and Panama Ecuador Shipping Corporation to be contrary to law, and void; (b) directing Respondents to cease and desist from carrying out their aforesaid contract for shipment of bananas from Ecuador to the United States, to the extent that such contract impairs the legal rights of Complainant to ship bananas via Grancolombiana's vessels; (c) requiring Grancolombiana to allot immediately to Complainant (subject to physical limitations of vessel capacity) refrigerated space for shipment of bananas in Grancolombiana's vessels in the trade from Ecuador to United States Atlantic ports, averaging 50,000 cubic feet per week, or such portion thereof as the Board may find to constitute Complainant's fair share of refrigerated space in such vessels; (d) ordering Grancolombiana to pay reparation to Complainant for his damages to the date of this complaint as above set forth in the amount of \$600,000.00, together with such damages as may accrue up to the date of the Board's final disposition of this proceeding and (e) awarding such other and further relief as the Board may determine to be just and lawful.

---

BEFORE THE  
FEDERAL MARITIME BOARD

Docket No. 841

BANANA DISTRIBUTORS, INC., *Complainant*,

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A., *Respondent*.

**Complaint**

I. Complainant is a corporation duly organized and existing under the laws of the State of New York, having its principal office at 30 Vesey Street, New York 4, New York,

engaged in the business of importing bananas into Atlantic Coast ports of the United States from various countries in Central and South America, including Ecuador.

II. Respondent is a corporation organized and existing under the laws of the Republic of Colombia, having its principal offices at Bogota, Colombia. Its general agent in the United States is Transportadora Grancolombiana Ltda., which agent maintains offices at 79 Pine Street, New York, New York. Respondent is a common carrier by water engaged in transporting cargo, including bananas, from Ecuador to ports on the Atlantic Coast of the United States, and as such is subject to the provisions of the Shipping Act, 1916, as amended.

III. A. Since 1955, Respondent has transported bananas, as a part of the above-described, common-carrier liner operation, from Ecuador to Philadelphia, and its vessels, operating in this trade, have refrigerated space suitable for carrying bananas ranging from approximately 27,000 cubic feet to approximately 62,000 cubic feet per vessel.

B. At various times since 1955, Complainant has demanded that Respondent make available to Complainant a portion of the refrigerated space on Respondent's vessels, in accordance with Respondent's obligations and duties as a common carrier under the Shipping Act, 1916, as amended. Complainant has been, at all times during at least the two-year period immediately preceding the filing of this Complaint, in a position to purchase bananas from growers and suppliers in Ecuador, to deliver them to Respondent's vessels at Ecuadorian ports, and to distribute and sell such bananas at a profit in markets on the Eastern seaboard of the United States and territories in proximity thereto.

C. Respondent has failed to comply with Complainant's demands for a reasonable and fair allocation of such refrigerated space. This refusal of Respondent to meet its

obligations as a common carrier has assumedly been based upon the fact that all of such banana-carrying refrigerated space is contracted, at least until July 20, 1959, to one shipper of bananas, who is a competitor of Complainant in this trade.

IV. A. Respondent's refusal and failure to furnish refrigerated space to Complainant as aforesaid confers an undue and unreasonable preference upon that shipper to whom Respondent has sold its entire refrigerated space on its cargo vessels in the trade from Ecuador to United States Atlantic ports, and subjects Complainant to undue prejudice and disadvantage in relation to such shipper, all in violation of paragraph "First" of Section 16 of the Shipping Act 1916, as amended.

B. Respondent's allotment to one preferred shipper, on a long-term contract basis, of the entire refrigerated space available for the northbound transportation of bananas on its cargo vessels and its consequent refusal of any portion of such space to Complainant constitutes unfair treatment of and unjust discrimination against Complainant in the matter of cargo space accommodations and other facilities (particularly refrigeration facilities), due regard being had for the proper loading of Respondent's vessels and the tonnage available to such vessels, all in violation of paragraph "Fourth" of Section 14 of the Shipping Act 1916.

V. By reason of the facts hereinbefore set forth, Complainant has been unlawfully prevented from utilizing the refrigerated space on Respondent's vessels, for the importation of bananas from Ecuador to United States Atlantic ports, and, during the two-year period immediately preceding the date of filing of this Complaint, has suffered damage, due to loss of profits incident to such business, in the sum of Six Hundred Thousand Dollars (\$600,000.00).

WHEREFORE, Complainant prays that Respondent be required to answer the charges herein; that after due hear-



ing and investigation an order be issued by the Board (a) adjudging the aforementioned contract between Respondent and its present preferred shipper of bananas to be contrary to law, and void; (b) directing Respondent to cease and desist from carrying out the aforesaid contract between Respondent and its preferred shipper of bananas from Ecuador to the United States, to the extent that such contract impairs the legal rights of Complainant to ship bananas via Respondent's vessels; (c) requiring Respondent to allot immediately to Complainant refrigerated space on Respondent's cargo vessels for the weekly shipment of bananas from Ecuador to United States Atlantic ports, in the amount of 50,000 cubic feet, or such portion thereof as the Board may find to constitute Complainant's fair and equitable share of refrigerated space in such vessels; (d) ordering Respondent to pay reparation to Complainant for his damages to the date of this Complaint as above set forth in the amount of \$600,000.00, together with such damages as may accrue up to the date of the Board's final disposition of this proceeding; and (e) awarding such other and further relief as the Board may determine to be just and lawful.

BANANA DISTRIBUTORS, INC.

By (Sgd.) SOL PALITZ

Sol Palitz

Title

Vice President

30 Vesey Street

New York 7, New York

(Sgd.) RICHARD W. KURRUS

Richard W. Kurrus

Attorney for Complainant

423 Washington

Building

Washington, D. C.

Filed: July 21, 1958.

## BEFORE THE FEDERAL MARITIME BOARD

Docket No. 827

PHILIP R. CONSOLO, *Complainant*,

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

PANAMA ECUADOR SHIPPING CORPORATION, *Respondents*.**Petition**

Flota Mercante Grancolombiana, S. A., a Respondent in the above-entitled proceeding, hereby respectfully petitions this Honorable Board, by Renato C. Giallorenzi, its attorney, for an extension of time within which to answer the complaint heretofore filed in the above-entitled matter by Philip R. Consolo.

That on October 30, 1957, the undersigned, on behalf of Flota Mercante Grancolombiana, S. A., filed a petition with the Federal Maritime Board for the issuance of a Declaratory Order at which time a copy of the petition was duly mailed to Philip R. Consolo, the Complainant in the above-entitled proceeding at the address indicated by him in the complaint filed in the above-entitled proceeding.

That on November 8, 1957, the Federal Maritime Board acknowledged the receipt of the petition filed by Flota Mercante Grancolombiana, S. A. for the issuance of a Declaratory Order.

That the Respondent, Flota Mercante Grancolombiana, S. A., in its petition for the issuance of a Declaratory Order, stated to the Federal Maritime Board that by reason of its decisions in *Banana Distributors, Inc. v. Grace Line, Inc.*, #771 and *Arthur Schwartz v. Grace Line, Inc.*, #775, numerous firms including the Complainant, had demanded that Flota Mercante Grancolombiana, S. A. rescind and cancel its present contracts and pro-rate the available refrigerated space, on its vessels which ply between Ecuadorian and United States port, among qualified shippers.

The Federal Maritime Board at the same time was advised by Flota Mercante Grancolombiana, S. A., in its Petition for the issuance of a Declaratory Order, that its present shippers with whom it has contracts to carry bananas from Ecuadorian to United States ports, had advised it that in the event it cancelled the existing contracts, it would be subjecting itself to a suit for damages. The Respondent, Flota Mercante Grancolombiana, S. A., having been placed by its present and prospective shippers in a position whereby it would be subjected to suit whichever step it took, deemed, in its best interests, to file the Petition for the issuance of a Declaratory Order, which it promptly did.

Subsequently, and on or about November 15, 1957, the Complainant, Philip R. Consolo, filed a complaint against Flota Mercante Grancolombiana, S. A., copy of which was subsequently served on the Respondent, Flota Mercante Grancolombiana, S. A., at which time it was advised that its answer had to be filed with the Board within twenty (20) days from the date of service, namely, December 5, 1957.

That in view of the fact that Respondent, Flota Mercante Grancolombiana, S. A., filed its Petition for the issuance of a Declaratory Order on or about October 30, 1957, it is respectfully requested that the time of the Respondent, Flota Mercante Grancolombiana, S. A., to answer the complaint in the above-entitled proceeding, be extended until such time as this Honorable Board has acted upon the Petition heretofore filed by the Respondent, Flota Mercante Grancolombiana, S. A.

That the subject matter of the Petition heretofore filed for the issuance of a Declaratory Order by Flota Mercante Grancolombiana, S. A., is similar in many respects to the subject matter of the complaint filed by Philip R. Consolo in the above-entitled proceeding, and in view of the fact that Flota Mercante Grancolombiana, S. A. filed its Peti-

tion for the issuance of a Declaratory Order prior to the filing of the complaint in the above-entitled matter, it is respectfully requested that until such time as the Federal Maritime Board acts upon the Petition of Flota Mercante Grancolombiana, S. A., that Flota Mercante Grancolombiana, S. A.'s time to answer the complaint in the above-entitled matter be extended.

WHEREFORE, it is respectfully prayed that the time of Flota Mercante Grancolombiana, S. A. to answer the complaint in the above-entitled matter be extended until such time as the Federal Maritime Board has acted upon the Petition heretofore filed by Flota Mercante Grancolombiana, S. A.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

By: RENATO C. GIALLORENZI  
Attorney

---

FEDERAL MARITIME BOARD  
WASHINGTON 25, D. C.

December 5, 1957

No. 827

PHILIP R. CONSOLO

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

and

PANAMA ECUADOR SHIPPING CORPORATION

**Notice of Enlargement of Time to File Answers**

A petition having been filed by respondent Flota Mercante Grancolombiana, S. A., requesting that the time within which to answer the complaint herein be extended until such time as the Board has acted upon the petition of said

respondent for a declaratory order in a separate proceeding to determine said respondent's status as a carrier of bananas from Ecuador to United States ports, and respondent Panama Ecuador Shipping Corporation having requested an extension until December 19, 1957, to file its answer, and complainant having filed a reply opposing the petition of respondent Flota Mercante Grancolombiana, S. A., and complainant having no objection to an extension until December 19, 1957, to file answers, and insufficient reason appearing why the orderly processing of the present proceeding should be delayed until the Board has acted upon the said petition for declaratory order, and good cause appearing, the time to file answers is hereby enlarged to and including December 19, 1957.

JAMES L. PIMPER  
James L. Pimper  
*Secretary*

---

BEFORE THE FEDERAL MARITIME BOARD

Docket No. 827

PHILIP R. CONSOLO, *Complainant*,

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A. PANAMA ECUADOR  
SHIPPING CORPORATION, *Respondents*.

**Answer**

Respondent, Flota Mercante Grancolombiana, S. A., by Renato C. Giallorenzi, its attorney, answering the complaint herein, respectfully alleges:

1. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph "1" of the complaint.

2. Admits that it is a corporation duly organized and existing under the laws of the Republic of Colombia, hav-

ing its principal office at Bogota, Colombia, and that its general agent in the United States of America is Transportadora Grancolombiana Ltda., which maintains offices at 79 Pine Street, New York, N. Y.

Admits that as part of its business activities it is engaged as a common carrier by water of freight in the foreign commerce of the United States, between ports in Ecuador and ports on the Atlantic coast of the United States, but denies that it is engaged in the transportation of bananas as a common carrier by water between the ports of the aforesaid countries.

Admits that only in connection with and for the purposes of its operations and business as a common carrier by water, it is a party to a steamship conference known as the Association of West Coast Steamship Companies, Agreement No. 3302, and that said agreement was approved by the predecessors of this Board pursuant to Section 15 of the Shipping Act, 1916 and continues as amended in effect.

Except as so admitted and denied, Respondent denies the remaining allegations contained in Paragraph "2" of the complaint.

3. Admits that the respondent, Panama Ecuador Shipping Corporation, presently has a contract with it for all of the refrigerated space suitable for the carriage of bananas on its vessels in service from Ecuador to United States Atlantic ports and except as herein admitted, denies the remaining allegations contained in Paragraph "3" of the complaint.

4. Admits that certain of its operations between Ecuadorian ports and United States Atlantic ports constitute a common carrier liner service but denies that it is a common carrier of bananas from ports in Ecuador to ports on the Atlantic coast of the United States.

Except as so admitted and denied, Respondent denies the remaining allegations contained in Paragraph "4" of the complaint.

5. Admits that it has operated and still operates a service from Ecuador to United States Atlantic ports with vessels which have refrigerated chambers suitable for the transportation of bananas for the account of one shipper only and do not permit of the allocation of space therein for more than one shipper and that said vessels have transported bananas from Ecuador to the port of Philadelphia since 1955 and that the refrigerated space suitable for bananas in respondent's vessels in Ecuador-United States Atlantic services ranges from approximately 27,000 cubic feet to approximately 62,000 cubic feet per vessel and except as herein admitted, denies the remaining allegations contained in Paragraph "5" of the complaint.

6. Admits that on occasion the complainant inquired of the respondent, Flota Mercante Grancolombiana, S. A., concerning the availability of refrigerated space for the carriage of bananas in the vessels operated by it from Ecuador to United States Atlantic ports, which space had been considered by complainant to be unsuitable for the carriage of bananas between Ecuador and United States Atlantic ports; and that complainant further requested that it be allowed to bid for refrigerated space on respondent, Flota Mercante Grancolombiana, S. A.'s, vessels, which space was subsequently and in its entirety contracted to respondent, Panama Ecuador Shipping Corporation, after the said company offered to pay to respondent, Flota Mercante Grancolombiana, S. A., a higher freight rate than any other person firm or corporation including complainant seeking such space and except as herein admitted, denies the remaining allegations contained in Paragraph "6" of the complaint.

7. Admits that it has contracted the whole of the refrigerated space of its vessels for a period of approximately three years commencing July 20, 1957 subject to

cancellation of said contract at the end of two years to the respondent, Panama Ecuador Shipping Corporation, and except as herein admitted, denies the remaining allegations contained in Paragraph "7" of the complaint.

8. Denies each and every allegation contained in Paragraphs "8", "9", "10" and "11" of the complaint.

WHEREFORE, Respondent, Flota Mercante Grancolombiana, S. A., prays that the complaint in this proceeding be dismissed.

Respectfully submitted,

Dated:

New York, N. Y.

December 18, 1957.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

By: ALVARO DIAZ S

*Managing Director*

RENATO C. GIALLORENZI

Renato C. Giallorenzi

*Attorney for Respondent,*

*Flota Mercante Grancolombiana,*  
*S. A.*

50 Broad Street

New York 4, N. Y.

---

January 9, 1958

Department of Commerce

Federal Maritime Board

Washington 25, D. C.

*Petition of Flota Mercante Grancolombiana*

Gentlemen:

On or about October 30, 1957, I filed with your good selves a petition in the above entitled matter, the receipt of which you acknowledged by notice dated November 8.



I would appreciate it if you would advise me at your very earliest convenience of the action which your Board will take in connection with said petition. If necessary, I will be pleased to come to Washington at any time you suggest.

You undoubtedly know that subsequent to the filing of my petition, Philip R. Consolo filed a complaint against my client bearing Docket No. 827, which complaint in the main raises precisely the same issues which my client would like to have adjudicated in the petition filed with your good selves.

Very truly yours,

RENATO C. GIALLORENZI

---

January 20, 1958

Renato C. Giallorenzi, Esquire  
50 Broad Street  
New York, New York

Re: *Petition of Flota Mercante Grancolombiana, S. A.  
for Declaratory Order*

Dear Mr. Giallorenzi:

In response to your inquiry of January 9, 1958, you are advised that the aforesaid petition is under consideration and early action is anticipated.

You will promptly be advised of the Board's action.

Very truly yours,

L. TIBBOTT

*Chief, Regulation Office*

March 31, 1958

Mr. G. O. Basham  
Chief Examiner  
Federal Maritime Board  
Washington 25, D. C.

Re: FMB Docket No. 827  
*Consolo v. Grancolombiana*

Dear Mr. Basham:

I should appreciate your setting the above-mentioned proceeding for prehearing conference at an early date.

Very truly yours,

GEORGE F. GALLAND

GFG:jw

cc. Elkan Turk, Jr., Esq.  
Renato C. Giallorenzi, Esq.

---

April 2, 1958

Mr. G. O. Basham  
Chief Examiner  
Federal Maritime Board  
Washington 25, D. C.

Re: FMB Docket No. 827  
*Consolo v. Grancolombiana*

Dear Mr. Basham:

I acknowledge receipt of a copy of a letter addressed to you on March 31, 1958 by Mr. Galland. I will be pleased to attend at a pre-trial conference. However, my calendar for the month of April is exceedingly heavy and it would be most difficult for me to come to Washington during this

month. I would suggest that the conference be held any day during the week of May 5th.

Awaiting to hear from you, I remain

Very truly yours,

RENATO C. GIALLORENZI

RCG:cmp

c.c. Galland, Kharasch & Calkins, Esqs.

c.c. Elkan Turk, Jr., Esq.

---

FEDERAL MARITIME BOARD  
WASHINGTON 25, D. C.

In your reply

Refer to file No.

A17-15:060

Dkt. No. 827

April 2, 1958

George F. Galland, Esq.

Galland, Kharasch & Calkins

1413 K Street, N. W.

Washington 5, D. C.

Dear Sir:

Receipt is acknowledged of your letter of March 31, 1958, requesting that this matter be set for prehearing conference at an early date.

As you know, there is pending before the Board a petition by Grancolombiana for a declaratory order as to that company's status in the carriage of bananas. The issues in the present proceeding and in the declaratory-order proceeding being somewhat similar, the present proceeding is being held in abeyance until the Board acts on the petition for declaratory order. If the Board should order a

hearing on the petition for declaratory order, it may be desirable to have a joint hearing in the two proceedings.

Very truly yours,

G. O. BASHAM  
G. O. Basham  
*Chief Examiner*  
*Hearing Examiners' Office*

cc: Elkan Turk, Jr., Esq.  
Renato C. Giallorenzi, Esq.

---

April 3, 1958

Mr. G. O. Basham  
Chief Examiner  
Federal Maritime Board  
Washington 25, D. C.

Re: *Consolo v. Grancolombiana*—  
Docket No. 827

Dear Mr. Basham:

This refers to your letter of April 2nd, stating that the above-mentioned proceeding has been suspended until the Board acts on the petition of Grancolombiana for a declaratory order. As I indicated in our telephone conversation this morning, we take the position that a complainant's statutory remedy under section 22 of the Shipping Act cannot be subordinated to a respondent's desire to procure declaratory relief on the same subject. We therefore renew with all possible emphasis our request that the complaint case be set down promptly for a prehearing conference, to be followed in due course by the full hearing which the

law requires. I will stop in your office in the next few days to discuss a specific date.

Very truly yours,

GEORGE F. GALLAND

cc: Elkan Turk, Jr., Esq.

Renato C. Giallorenzi, Esq.

Your File No. A17-15:060

---

April 4, 1958

Mr. G. O. Basham  
Chief Examiner  
Federal Maritime Board  
Washington 25, D. C.

Re: *Consolo v. Grancolombiana*  
Docket No. 827

Dear Mr. Basham:

I acknowledge receipt of your letter of April 2nd and a copy of Mr. Galland's letter of April 3rd.

I note the position which you have taken with regard to the pre-trial hearing, and I understand that you are of the opinion that the pre-trial hearing in the CONSOLO matter should await your disposition on the petition of Grancolombiana for a Declaratory Order.

Mr. Galland apparently does not agree with this conclusion and would like to discuss this matter with you within the next few days. It is my opinion that the position which you have heretofore taken is a sound one, but in the event Mr. Galland desires to confer with you, I would appreciate it if you would advise Messrs. Vaughn & Dougherty, Warner Building, Washington 4, D. C. so that they may represent me in opposing Mr. Galland's application.

I might mention, in passing, that I understand that an appeal is pending in the Bananas Distributors—Grace Line matter, which appeal will be heard in the Court of Appeals for the Second Circuit, and that is a further reason why there should be a delay in any pre-trial conference.

Very truly yours,

RENATO C. GIALLORENZI

---

April 8th, 1958

Chief Examiner G. O. Basham  
Office of Hearing Examiners  
Federal Maritime Board  
5th and "G" Streets N. W.  
Washington 25, D. C.

Re: *Consolo v. Grancolombiana*  
Your Ref: A17-15:060 Docket #827

Dear Mr. Basham:

I have noted copies of the letters to you from Mr. Galland and Mr. Giallorenzi, dated March 31st and April 2nd, 1958, respectively, your letter to Mr. Galland, dated April 2nd, 1958, and Mr. Galland's reply, dated April 3rd, 1958. I am writing to advise that May 5th, 6th or 7th, or any day during the week of May 12th would be convenient to me and my associate, Elias Rosenzweig, Esq., to attend a prehearing conference in Washington on behalf of Panama Ecuador Shipping Corp.

A comment or two regarding Mr. Galland's letter of April 3rd would seem to be in order. It is our understanding that the petition of Grancolombiana seeking declaratory relief in the premises, was filed earlier than the complaint in the above proceeding, and is equally statutory in its foundation as is the complaint herein, since it is authorized by §5(d) of the Administrative Procedure Act. There

would seem to be no cause to depart from the general principle that the Board has the discretion to control the progress of all proceedings pending before it, taking into account, where appropriate, the relationship between separate pending actions.

I also note that Mr. Galland's letter refers to *ex parte* telephonic representations regarding his position which have already been made, and predicts that an *ex parte* oral application will be made at your office at an unspecified date to consider a specific date for a prehearing conference. We do not consider *ex parte* representations and applications to be appropriate under either the Shipping Act or the Administrative Procedure Act. Such practice gives the other parties no opportunity to present their positions, either as to legal right or personal convenience. We earnestly urge that all future communications with the Board or the Office of Hearing Examiners be in writing, with copies to all parties in interest. We definitely desire to be heard on the choice of a prehearing date.

Next, I would respectfully call your attention to the pendency in the United States Court of Appeals for the 2d Circuit, of the petition of Grace Line, Inc., dated October 18th, 1957, to review the decision of the Board in *Banana Distributors, Inc., et al. v. Grace Line, Inc.*, dockets 771 and 775. Since the decision in that case may have a bearing on the determination of what are the significant issues in the instant case, it would seem to serve the interests of the Board and the parties to suspend all proceedings with respect to both Grancolombiana's petition for a declaratory order and Consolo's complaint until the decision of the Court of Appeals is announced.

Finally, I would comment on the sudden appeal for hasty disposition reflected in Mr. Galland's letters. We know that Mr. Galland has just emerged from an 8-week subsidy hearing. We submit, however, that his inability during that long period to attend to matters in docket 827 does

not justify the Chief Examiner in disregarding the convenience of other parties now that Mr. Galland is at liberty and of an inclination to proceed in haste.

Yours very truly,

ELKAN TURK, JR.

Cc.: Renato C. Giallorenzi, Esq.,  
50 Broad Street  
New York 4, N. Y.

George F. Galland, Esq.,  
Galland, Kharasch & Calkins, Esqs.,  
1413 K Street N. W.  
Washington 5, D. C.

---

#### Order

At a Session of the Federal Maritime Board held at its office in Washington, D. C., on the 1st day of May 1958.

No. 835

#### FLOTA MERCANTE GRANCOLOMBIANA, S. A.—CARRIAGE OF BANANAS FROM ECUADOR TO THE UNITED STATES

WHEREAS, Flota Mercante Grancolombiana, S. A. filed a petition requesting the Board to issue, after full hearing, a declaratory order determining the validity of contracts between it and Panama Ecuador Shipping Corporation and Grand Shipping Inc., for movement of bananas from Ecuador to the United States in the light of the decision of the Board of April 29, 1957, in *Banana Distributors, Inc. v. Grace Line, Inc.*, Docket No. 771 and *Arthur Schwartz v. Grace Line, Inc.*, Docket No. 775; and

WHEREAS, There is currently pending before the Board a proceeding based on substantially similar issues of law and fact, namely Docket No. 827, *Philip R. Consolo v. Flota*



*Mercante Grancolombiana, S. A. and Panama Ecuador Shipping Corporation; and*

WHEREAS, The Board having considered said petition, and good cause appearing,

IT IS ORDERED, (1) That the petition of Flota Mercante Grancolombiana, S. A. requesting the Board to issue, after full hearing, a declaratory order determining the validity of contracts between it and Panama Ecuador Shipping Corporation and Grand Shipping Inc., for movement of bananas from Ecuador to the United States in the light of the decision of the Board in Dockets Nos. 771 and 775 be, and it is hereby, granted; (2) that such hearing be held before an Examiner of the Board's Hearing Examiners' Office at a date and place to be determined and announced by the Chief Examiner, to receive evidence for determining the validity of the contracts described above; and (3) that hearing herein ordered be consolidated with Docket No. 827, *Philip R. Consolo v. Flota Mercante Grancolombiana, S. A. and Panama Ecuador Shipping Corporation*, for hearing and report.

By the Board.

(sgd.) GEO. A. VIEHMANN  
*Assistant Secretary*

(SEAL)

FEDERAL MARITIME BOARD  
WASHINGTON 25, D. C.

August 4, 1958

No. 841

BANANA DISTRIBUTORS, INC.

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

**Notice of Consolidation and of Hearing**

Notice is hereby given that this proceeding will be consolidated for purposes of hearing with Docket No. 827, *Philip R. Consolo v. Flota Mercante Grancolombiana, S. A.*, and Docket No. 835, *Flota Mercante Grancolombiana, S. A.—Carriage of Bananas from Ecuador to the United States*, and that hearing in the consolidated proceedings will be held before the undersigned beginning at 10 o'clock a.m., September 22, 1958, in Room 705, 45 Broadway, New York, N. Y.

A recommended decision will be issued.

C. W. ROBINSON  
C. W. Robinson  
*Presiding Examiner*

FEDERAL MARITIME BOARD  
WASHINGTON, D. C.

Docket Nos. 827, 835

PHILIP R. CONSOLO,

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.,

and

PETITION OF FLOTA MERCANTE GRANCOLOMBIANA, S. A.

Docket No. 841

BANANA DISTRIBUTORS, INC.,

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.,

Respondent-petitioner, Flota Mercante Grancolombiana, S. A., moves, pursuant to Rule 7 (e) of the Board's Rules of Practice and Procedure, for an order postponing the hearing date heretofore fixed in the above-entitled proceedings from September 22, 1958 at 10 A. M. in Room 705, 45 Broadway, New York, N. Y. to December 1, 1958 at 10 A. M. in Room 705, 45 Broadway, New York, N. Y.

Dated: New York, N. Y.

August 8, 1958.

Respectfully submitted,

RENATO C. GIALLORENZI,  
*Attorney for Respondent-  
Petitioner,*  
26 Broadway,  
New York 4, N. Y.

STATE OF NEW YORK     }  
COUNTY OF NEW YORK   } ss:

RENATO C. GIALLORENZI, being duly sworn, deposes and says:

That I am the attorney for the respondent-petitioner, Flota Mercante Grancolombiana, S. A., in the above-entitled proceedings.

That by notice dated August 4, 1958, the respondent-petitioner was advised that the hearing in the consolidated proceedings entitled Docket No. 827, Philip R. Consolo v. Flota Mercante Grancolombiana S. A. and Docket No. 835, Flota Mercante Grancolombiana, S. A. Carriage of Bananas from Ecuador to the United States, which had heretofore been scheduled for a hearing on September 22, 1958 in Room 705, 45 Broadway, New York, N. Y., would be heard simultaneously with Docket No. 841, Banana Distributors, Inc. v. Flota Mercante Grancolombiana, S. A.

That the Banana Distributors, Inc. v. Flota Mercante Grancolombiana, S. A. proceeding, Docket No. 841, was instituted by the service of a complaint on the respondent-petitioner on July 21, 1958. That the said complaint heretofore filed in that proceeding has not been answered by the respondent-petitioner inasmuch as there is now pending before this Honorable Board an application for a bill of particulars in that proceeding.

There is likewise pending before this Honorable Board an application for a bill of particulars in the proceeding entitled Philip R. Consolo v. Flota Mercante Grancolombiana, S. A. Docket No. 827.

That both in Docket No. 827 and Docket No. 841, the various complainants are seeking reparations, among other relief, in the sum of \$600,000.00 each. In order to properly defend the proceeding instituted by Banana Distributors Inc. against the respondent-petitioner, Flota Mercante Grancolombiana, S. A. (Docket No. 841), it will be neces-

sary for the respondent-petitioner to investigate and prepare fully its defense against the claim made by Banana Distributors, Inc. in the complaint which it has filed against respondent-petitioner.

That inasmuch as respondent-petitioner's answer has not been filed in that proceeding, nor has any ruling been made on respondent-petitioner's application for a bill of particulars in Docket Nos. 827 and 841, it will be impossible for the respondent-petitioner to adequately prepare a defense to both proceedings.

That in Docket No. 827 the respondent-petitioner advised this Honorable Board that the demand for a bill of particulars had not been made sooner in view of the fact that the Board had not ruled until June 23, 1958 that it would try the issues of reparations at the same time as the issues of common carriage. Since it is essential to obtain a bill of particulars in not only the Consolo proceeding, Docket No. 827, but also in the Banana Distributors, Inc. proceeding Docket No. 841, the respondent-petitioner cannot properly prepare its defense to not only the issue of common carriage, but also the issue of reparations. To compel the respondent-petitioner to proceed with these hearings on September 22, 1958 would gravely prejudice its rights, especially in view of the seriousness of the issues raised in these matters and also because of the heavy damages which both complainants are seeking against respondent-petitioner.

It is for the foregoing reasons that the respondent-petitioner requests that the hearings in all of the above-entitled proceeding be adjourned to DECEMBER 1, 1958 at 10 A.M. in Room 705, 45 Broadway, New York, N. Y.

The denial of this application would seriously prejudice the rights of the respondent-petitioner and this request for a short adjournment cannot in any manner be detrimental to the interests of the complainants in the above-entitled proceedings.

WHEREFORE, it is respectfully requested that the hearings in the above-entitled proceedings be adjourned to December 1, 1958 in Room 705, 45 Broadway, New York, N. Y.

RENATO C. GIALLORENZI

Sworn to before me this  
8th day of August, 1958

LENORE SCALLEY

*Notary Public, State of New York*

No. 41-8778800

Qualified in Queens County

Cert. filed in New York Co. Clk.

Commission Expires March 30, 1960

---

FEDERAL MARITIME BOARD  
WASHINGTON 25, D. C.

August 22, 1958

No. 827

PHILIP R. CONSOLO

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

No. 835

FLOTA MERCANTE GRANCOLOMBIANA, S. A.—CARRIAGE OF  
BANANAS FROM ECUADOR TO THE UNITED STATES

No. 841

BANANA DISTRIBUTORS, INC.

v.

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

### Notice of Postponement of Hearing

Hearing heretofore scheduled to be held herein before the undersigned beginning at 10 o'clock a. m., September 22, 1958, in Room 705, 45 Broadway, New York, N. Y., is hereby postponed to November 3, 1958, at the same hour and place.

C. W. ROBINSON

C. W. Robinson

*Presiding Examiner*

1

Wednesday, May 7, 1958

### Prehearing Conference

\* \* \* \* \*

19 \* \* \* In the preceding two cases, 717 and 771 and 775, the legal or factual issue of common carriage was tried separately from the damages. We intend to be very brief on the common carrier issue. It's not going to take us very long, assuming we get this information here that we have requested to put in our evidence on that issue and we would propose to proceed right away, as part of our direct case, to damages.

We feel the law is clear enough now that there is no saving of time to anyone in trying to separate the cases, as the other cases have been split, so we could offer a rough case of a day—say a day and a half, maybe—for our direct case, including both the damages and the common carriage issue.

**EXCERPTS FROM TESTIMONY AND PROCEEDINGS**

4        Examiner Robinson: As far as I am concerned we can start now with 827, unless someone has an objection?

Mr. Giallorenzi: I have an objection to that, Mr. Examiner. I think we should first offer proof on the petitioner's declaratory order, which Grancolombiana filed on or about October 30, 1957, and which was filed before any complainant I think at least a month-and-a-half before Consolo filed his complaint in this proceeding which is now being heard, and I feel that we take precedence, we took initiative in starting, initiating these proceedings, that the proof which we will offer should be heard first, I think for the sake of good order, it is logical that the proof which we offer on our declaratory order matter be considered, at least received first, and then claims for reparations can follow immediately after that.

Examiner Robinson: Anyone have any comment?

Mr. Kharasch: We object to it, Mr. Examiner. Mr. Lippman is just checking—

Mr. Lippman: I object, Mr. Examiner, at the first pre-hearing conference held in Washington last May this very matter was discussed, and it was agreed at that time that we would proceed first. I'm trying to find the—

Mr. Kharasch: We have prepared our case.

Mr. Lippman: Trying to find that in the minutes which confirms that.

5        Mr. Kharasch: We prepared our case and arranged for our witnesses on the assumption that we were to proceed in the logical order of the complaint and the people who are complaining about the established order of things going first and matters of defense be offered later.

Mr. Giallorenzi: Can we have a moment to check that agreement?

Examiner Robinson: Certainly.

Mr. Lippman: Here it is, Mr. Examiner, page 15 of the pre-hearing transcript held last May, I made the following



comment: "Mr. Examiner, in view of the fact that we have a complaint procedure here, consolidated for hearing purposes with a declaratory order proceeding, I think it would be helpful to have them—to have a more complete understanding as to the procedure at the hearing. Are we to understand we are to proceed with our complaint, our direct case on the complaint case initially or before the petitioners in the proceeding involving the declaratory order will come forward with whatever they have to produce?" And, Mr. Examiner, you ruled, "I should think you would."

Mr. Giallorenzi: Where is that ruling?

Mr. Lippman: Page 16 of the transcript.

Mr. Kharasch: Would you like to see it? It would be most inconvenient for us to postpone the presentation of our case. We have a witness come from Washington and we have arranged for a witness to come from New York.

Examiner Robinson: Well, I think from the 6 practical point of view, seems to me that the respondent would come last, not because of the inferiority of the complaint, I don't mean that at all, but the fact that your position is going to be the same whether on offense or defense, and I should think the orderly procedure would be let the complainants put on their case, we don't have to go into reparations necessarily at the first, if you don't want to, because, basically, as to the merits of the case, because whatever you put in, is going to be ostensibly an answer to their complaint, anyway.

Mr. Giallorenzi: No question about that.

\* \* \* \* \*

Examiner Robinson: I think it is conceded that there is no question as a matter of a few weeks precedence you had filed your petition. I don't think that necessarily should I would say outweigh what seems to be commonsense overall picture. You're not going to be prejudiced any way.

Mr. Giallorenzi: I don't know because I thought for the sake of good order I would like to have my proof go

in on this declaratory petition because we were the ones initiated these proceedings.

Examiner Robinson: That's very true insofar as one docket is concerned, but then you do have another complaint case and, as I say, whatever you put in is also going to be in the nature of your defense in the complaint case. Let's start ahead on the presentation, on the theory then, complaint action started.

\* \* \* \* \*

8 **Leonard Morey**

was called as a witness and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Kharasch:

Q. Will you state your name and your business address, Mr. Morey? A. My name is Leonard Morey. My business address in 383 Lafayette Street, New York City, New York.

\* \* \* \* \*

11 Q. Mr. Morey, you received a subpoena? A. Yes, sir.

Q. A subpoena served by the United States Marshal? A. Yes, sir.

Q. Addressed to Leonard Morey, president, Panama Ecuador Shipping Corporation, 22 East 4th Street, New New, New York. Now, where is your office in New York? A. That's the same building as 383 Lafayette Street.

Q. Never mind about that. Answer the question. Where is your office in New York? A. Where I make my business headquarters?

Q. Yes. A. 383 Lafayette Street.

Q. All right, and this is the same building 22 East 12 4th? A. Yes, sir.

Q. And you have your office in this building, right? A. Yes, sir.

Q. And you received this subpoena from the Marshal, is that right? A. Yes, sir.

21

**Jose J. Borrero**

was called as a witness and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

By Mr. Kharasch:

22

Q. And your occupation? A. Operating manager, acting general manager Grancolombiana (New York), Inc.

Q. What is the business of Grancolombiana, Incorporated, New York? A. General agent for Grancolombiana.

Q. What services does Grancolombiana offer which touch the United States? What different steamship services?

Mr. Giallorenzi: Please fix the time.

23

Q. At the present time. A. You want all coasts?

Or any particular coast?

Q. Briefly just name whatever you call the different services. A. Flota has service that runs from New York, Baltimore, Philadelphia, to west coast, South America as far down as Peru; another that run from New York, Baltimore and Philadelphia, east coast, Columbia, east coast Central America and Gulf Port, U. S. Gulf Port; and has another that runs from the Gulf Port of the United States, west coast, South America, as far down as Peru.

Examiner Robinson: In other words, you have two distinct services?

The Witness: Another, that runs from the U. S. Gulf Ports at the east coast, Central America, east coast, Columbia; another, that runs from Vancouver, U. S. Port, west coast, South America.

Q. Vancouver and the United States, west coast.

Examiner Robinson: When you say Vancouver, too, you mean Canada?

The Witness: Yes. Another, that runs from Vancouver, Canada, U. S. Ports, west U. S. A. Ports, west coast ports, Central America to east coast, Columbia. There is another service that—

Q. You say there is another service? A. There is  
24 another service that run from the St. Lawrence River port that has a call in Boston, and that now goes as far down south as Peru, Columbia port, east coast, and west coast Columbia port. These are.

Q. Are you through? A. I think so.

Q. Approximately how many vessels does Grancolumbiana operate in these services altogether? A. Say about 35, roughly.

Q. Which Grancolumbiana services carry cargo between the United States and Ecuador, United States Atlantic ports and Ecuador? A. The one that run from New York, Baltimore, Philadelphia to west coast, South America, and Atlantic, you say, that's the only one.

Examiner Robinson: They serve all three American ports on each voyage, is that it?

The Witness: Yes, Baltimore, Philadelphia and New York.

Q. Let's take the service as it is presently operated, would you name again for the record the United States ports served? A. Baltimore, Philadelphia, New York.

Q. Are they served in that order?

Examiner Robinson: Which direction are you talking about now?

Q. Let's start the ship and say where do you con-  
25 sider the service begins? A. In New York.

Q. All right. Begin in New York and please give the usual itinerary of the ships at the present time? A. New York, Buenaventura.

Q. What country? A. Columbia, Guayaquil and, that's in Ecuador, and then the Peruvian port.

Q. And then what happens to the ship? A. Come back.

Q. Along the same route? A. Along the same route.

Q. From Peruvian ports? A. Through ports.

Q. Ecuador ports? A. Manta, Bahia. Then Buena-ventura, Philadelphia, then Baltimore, and then New York.

Q. In Ecuador these ships call at Guayaquil? A. Yes, they do.

Examiner Robinson: How do the ships get to Philadelphia, through the canal?

The Witness: Through the canal, yes.

Q. With what frequency do you operate the services you—we're talking about?

Mr. Giallorenzi: Please fix the time.

26 Q. At the present time. A. Weekly, frequency.

Q. With what frequency was the services operated in 1957, last year? A. Same frequency.

Q. 1956? A. The same frequency.

Q. In 1955? A. The same frequency.

30 Q. Approximately how long does it take for the ships presently in this service to come from Ecuador to Philadelphia? A. About eleven days.

35 Q. Grancolombiana is a member of the conference number 3302, and has been since November 1955, is that correct? A. This is the same one here?

Q. Yes, sir. A. Yes.

40 Q. And bananas are regularly carried from Guayaquil? A. Yes.

59 **Alberto Sanchez**

was called as a witness and, having been first duly sworn, was examined and testified as follows:

64 Q. Is all that refrigerated space in one hold? A. In one hold. In Hold No. 3, divided in three different sections, upper tween, lower tween deck and lower hold.

70 Q. If you will look at Exhibits 13 and 14. In Exhibits 13 and 14 we are looking at the side ports, one on one side and one on the other, correct? A. Yes, sir.

Q. Is cargo discharged from both sides, both side ports simultaneously? A. No, only from one port.

Q. It's loaded through both? A. Loaded through both sometimes, yes.

74 Q. Now, when the ship is unloaded in Philadelphia, and Philadelphia is the place where most bananas are unloaded? A. Yes, sir.

Q. I mean, where bananas are usually unloaded? A. Yes, sir.

Q. When the ship is unloaded what is the first thing which happens, what's the first operation? A. Well, in this matter, in my testimony, I can tell you only what I can see, because I don't take any charge of these operations.

Q. You are not in charge of the stevedoring? A. No, sir.

Q. Who would be in port, Captain, in charge? A. In charge of stevedoring, no one in Grancolombiana is. The shipper takes charge of the stevedoring.

108 Jose J. Borrero

119 Cross-Examination

By Mr. Blackwell:

120 Q. Mr. Borrero, could you tell me, if it is within your knowledge, when Grancolombiana first carried bananas northbound from Ecuador to North Atlantic ports of the United States? A. Yes.

Q. What year was that, sir? A. Let me see if I have some information.

Mr. Giallorenzi: This is off the record.

Examiner Robinson: Off the record.

(Off-the-record discussion)

The Witness: You say from Guayaquil?

Q. Guayaquil, any other ports in Ecuador? A. In the Ecuadors, 1950, February, 1950, about February, 1950.

Mr. Blackwell: Mr. Giallorenzi—

Mr. Giallorenzi: Yes?

Mr. Blackwell: —just off the record you suggested that he had a document which indicates the names of the shippers that carried bananas, that carried for Grancolombiana. Is that in such a state that it can go into the record, Mr. Giallorenzi, would you like to—

Mr. Giallorenzi: Yes, it was prepared by Mr. Kritzler in obtaining the history of the transportation of 121 bananas by Grancolombiana vessels. August, 1949, July, 1955, and it was prepared specifically for the purpose of assisting us in this matter here, and I have no objection to putting it in, it was dated September 18, 1957.

The Witness: May I say something?

Mr. Blackwell: Go ahead.

Mr. Giallorenzi: Go ahead.

Examiner Robinson: Yes, certainly.

The Witness: I mean that is certain reference and in that document this deals directly with the persons that behavior, shippers, that I don't think that is proper, relevant to the case.

Mr. Giallorenzi: By that he means, that there are certain people that didn't pay their bills, and we had to sue them.

Examiner Robinson: That's something you gentlemen will have to decide.

Mr. Blackwell: That is a company document. I wouldn't mind at all if it was handed to the witness, he can read over the names of the shippers, and the dates that the arrange-

ments were consummated and bananas actually shipped during what periods. A. I have here, Mr. Lewis A. Noboa, from Guayaquil. He ships from 1950, February, 1950 to March, 1951. In only one vessel, namely, De Quito.

Mr. Lippman: That was May, 1950?

The Witness: February, 1950 to March, 1952, excuse me, 1951. March, 1951. Again, from May, 1951 he continued shipping in the Quito and the Medellin. And  
122 I believe it was consecutively, two vessels. Now, in August, 1952, he was still with this Quito, Medellin, but then Manizales, and this Barquisimeto, and that thing finished in 1954, about February, 1954.

Mr. Lippman: This is still Mr. Noboa, the only shipper?

The Witness: Yes, so far. From Guayaquil.

Examiner Robinson: Let me ask, did he have a contract or did he ship as common carrier?

The Witness: No, he had contract, made with the principals in Bogota, we acted here only as agent, you see. In 1951 Flota Mercante Grancolombiana made an agreement, a contract, with Mr. Hans Tobisson. That was assigned to the Ocean Commercial and Development Company of Haiti, of Haiti.

Q. What year was that? A. About April or May, 1951. The contract was originally made for transportation from Santa Marta to New York.

Q. Excuse me, Santa Marta? A. In Colombia. But in February, 1952 a supplementary agreement which was made, which provided for the use of this Barquisimeto, from Guayaquil to New York. In March and April, 1953 there were four shipments, trial shipments made from Guayaquil to New York by West India Fruit Company.

Mr. Kharasch: West India?

The Witness: Fruit Company of Miami. And then I believe that from February or—from 1954, 1955 we  
123 didn't carry any bananas from Guayaquil, there was a lapse of time, never carried.



Mr. Lippman: Excuse me, could you read back that last answer?

(Last answer repeated by the reporter.)

Q. So, Mr. Borrero, at least three shippers since 1950, Mr. Noboa, Hans Tobisson, and the West India Fruit Company have transported bananas on your vessels from Ecuador to the United States, North Atlantic ports, is that right? A. That's right.

Q. Now, and I presume that in all three instances those bananas were transported under contract arrangement? A. Special arrangement.

Q. Now, during that four-year period were any of these contractors or lessees of the space on the same vessel or did they actually ship on— A. There never have been more than one on each vessel.

Q. Now, has Grancolombiana since 1950 executed contracts with other shippers for the carriage of bananas from any other areas of the Caribbean or South America to North Atlantic ports? A. Yes.

Q. Could you give me those, please? A. I think he can give you.

Mr. Giallorenzi: I have the agreement here, Mr. Blackwell, if you would like to have them?

124 Mr. Blackwell: I really don't, if you can hand them to the witness, read them out, be very happy to have them done that way. I don't really care to see them at this moment.

Mr. Giallorenzi: Did you say North Atlantic ports? I take that back, that is Gulf ports.

The Witness: Yes, that's Gulf ports.

A. (Continuing) I am going to answer him. From August 1949 to December, 1949 Mr. Alfredo Lizano Corporation, New York, made eight shipments from Santa Marta to Colombia to New York, Flota had entered with him into a one-year contract during this time, but only eight shipments were made, Maracaibo, Manizales—

Mr. Giallorenzi: Off the record a moment.

Examiner Robinson: Off the record.

(Off-the-record discussion)

A. (Continuing)—Panama Fruit Company and American Fruit Company, Los Angeles, in October, 1949, he made trial shipments, arranged through the Guayaquil office of Flota, for eight shipments of bananas from Guayaquil to New York, in Ci-Mac-1 type vessel. In April, 1950, Mr. Dangond Fernandez, and De Castro, of Santa Marta, Colombia, made trial shipments, which preceded a formal contract, dated August 1, 1950, for six months. And covered were the vessels Maracaibo and Manizales. About seventeen shipments were made in these two vessels from April, 1950 through January, 1951, and that finished that transportation. I think that's all, because I already mentioned Hans Tobisson agreement.

125 Q. So I think it would be fair to summarize your testimony that between the dates of 1949 to the present, Grancolombiana under contracts or so-called trial shipments carried bananas from either Colombia, Ecuador to the United States, North Atlantic ports for seven shippers?

Mr. Giallorenzi: Not at the same time.

A. This is No. 7.

Q. All right.

Examiner Robinson: Whatever the record shows is the number.

The Witness: Okay. Six.

Q. And the present shipper? A. Seven.

Q. Now, Mr. Borrero, during any of that period did any of the, did any vessel of Grancolombiana carry for more than one shipper? A. No, sir.

Q. I take it that Grancolombiana first carried bananas from Ecuador to the United States, North Atlantic ports, in 1950, is that right? A. No. From Ecuador, 1950, but

first time carried Santa Marta, in accordance with this information in 1949.

\* \* \* \* \*

126 Q. I would like to clear up the problem on the Grancolombiana bill of ladings. Now, forgetting for the moment any overstamp on bills of lading, we will get to that later. Is the bill of lading issued for the carriage of bananas in northbound carriage of bananas similar to the bill of lading that Grancolombiana issues to its southbound service? A. It is.

Q. Except for the overstamp? A. Except for the overstamp.

Q. And it would be, likewise, similar, would it not, to all bills of lading in this trade that Grancolombiana issues for the carriage of all dry general cargo, is that right? A. Well, I haven't had a chance to see anybody else's bills of lading.

Q. Grancolombiana bills of lading, with the exception of the overstamp, the bill of lading issued for the carriage of bananas is identical with that that Grancolombiana issues for the carriage of general cargo in both directions, is that right? A. I think I answered that in the affirmative, yes, I believe so.

\* \* \* \* \*

127 Q. Mr. Borrero, do you know when that overstamp was first inserted, or stamped on bills of lading?

A. In this particular one?

Q. Well, I presume that the overstamp has been the same, not been changed? A. Yes.

Q. When was it first used? A. I don't particularly remember exactly, when it started, I have seen that long ago, with all this agreement, Tobisson, but exactly when, what particular transportation, I can't answer that.

Q. Do you think you can find out for me? A. I can try.

Q. Fine. I would like to know when that overstamp, and on the bills of lading, issued in every one of the

instances you have given me on the shipments of bananas by Grancolombiana, if you can find them? A. Yes.

128 Q. Now, can you tell me, sir, whether this or any other overstamp, similar to this, is stamped on any other bills of lading that Grancolombiana issues on any other commodity? Is the overstamp used for the carriage of any other commodity? A. This particular overstamp was issued, or is imprinted for the only purpose of bananas, I can't answer your question regarding any other transportation type.

\* \* \* \* \*

203

**Leonard Morey**

having been previously sworn was recalled and testified further as follows:

### Direct Examination

By Mr. Kharasch:

\* \* \* \* \*

210 Examiner Robinson: In other words then your answer was you would have not taken less space provided somebody else was on there?

The Witness: That's right, we would take as much space as we could have.

Q. Now, that is your answer as of July 1955, correct? A. That's right.

Q. Now, on July 29, 1957, a new ship, the De Tunja arrived in the trade, would your answer be—what would your answer be as of July 29, 1957? A. My answer would be identical to the answer of the previous question.

Q. You would not share it? A. Would not share it.

Q. How about after the Manuel? A. All those boats are the same class.

Q. How about after the new ships arrived? A. They are all in the same class.

Q. How about when all the ships in the new class arrived?

A. My professional opinion is that they are not designed for multiple carriage of refrigerated material.

\* \* \* \* \*

215

**Philip R. Consolo**

was called as a witness and having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. Lippman:**

Q. Will you state your name for the record, Mr. Consolo?

A. Philip R. Consolo.

Q. Where do you reside? A. 4425 North Michigan Avenue, Miami Beach.

Q. Are you the complainant in Docket 827? A. Yes, I am.

Q. Are you Philip R. Consolo who was the complainant in Docket 717? A. Yes, I am.

Q. What is your occupation? A. I am a banana importer.

Q. How long have you been engaged in the importation of bananas? A. I would say in the neighborhood of about 15 years.

Q. During that time have you been connected with several importing ventures? A. Yes, I have.

216 Q. What was the first such venture? A. The first such venture was exporting bananas from the Republic of Haiti.

Q. You said exporting, you were importing bananas, but you originated in the Republic of Haiti? A. Yes.

\* \* \* \* \*

217 Q. What was your next banana venture? A. With the Dominican Republic.

\* \* \* \* \*

Q. Now, the next venture? A. I went to export bananas from Ecuador on privately chartered vessels which were referred to as Corvette's.

Q. When did that take place, Mr. Consolo? A.  
218 I believe in 1945, I don't want to be held to the exact date, in that area, 1945.

Q. Where were they received in the United States? A.  
In Port Everglades in Florida, that is the Miami area also.

Q. What volume did you ship on these Corvette's? A.  
Their capacity I believe was about eight to ten thousand stems, varying on the size of the stems.

Q. Why was that discontinued? A. Because the ships were not suitable for transporting these bananas and we had quite a bit of difficulty in the refrigeration and we had several cargos come in in a ripe condition.

Q. The refrigeration facilities on the ships then were not suitable, is that correct? A. Correct.

Q. Now, your next venture? A. I went back to Haiti, I received an exclusive franchise for the Republic of Haiti for the northwest division of Haiti to export bananas.

Q. When did that take place? A. Sometime in '46, if my memory is correct.

Q. What volume of bananas were imported under that arrangement? A. I would say at least a million stems  
219 a year, in that neighborhood, more or less varying from week to week.

Q. Which was the port of entry? A. The port of entry was Miami again at this time.

Q. How long did that operation continue? A. That operation I believe continued for—we had a franchise for 8 years for about two or three years, then the government changed, Estime was the President of the Government of Haiti, the Government changed and the new Government wanted the franchise back and bought us out.

Q. What type vessel did you use in that operation? A. Privately chartered vessels of gross tonnage I say between four and five hundred tons with a carriage of 225 ton.

\* \* \* \* \*

Q. What was your next banana importing venture? A. My next banana importing venture at that time was pretty dormant, just buying and selling bananas.

Q. Then what was your next venture in chronological order? A. My next venture was at the time I commenced shipment on the Grace Line ship which I believe was September of 1953.

Q. Where do you obtain the bananas you are now importing? A. From Ecuador.

Q. Is it possible for you to obtain bananas in suitable bananas for consumption in the United States in substantial volumes anywhere else? A. Not at the present time.

Q. Why is that? A. Well, generally referred to in the trade, United Fruit Company and Standard Fruit Company are the major factors, they seem to have control of any large quantities or production I should say of bananas that are grown in Central America and Caribbean areas there is very little independent fruit to the best of my knowledge.

Q. By the term independent, what do you mean? A. The word independent in the trade is referred to fruit that is not owned from United or Standard, that is on an open market to go into a country and be free to negotiate to purchase it. That is what I mean by independent fruit.

\* \* \* \* \*

223 Q. Was the Grace Line operating a regular scheduled weekly service at that time? A. On their passenger ships, yes.

Q. On their freighter vessels? A. Approximately a fortnightly service.

Q. What about the Chilean Line? A. The Chilean Line to the best of my knowledge because I never inquired for space in the Chilean Line was a fortnightly service, but not regular and they would stop off at intermediary ports where there would be no definite date of arrival in the United States, it could be 10, 11, 12, 13, 14 days they could stop or off Buenaventura, Havana, then come to whatever

port was designated for bananas, that is my knowledge of it.

Q. Isn't it important to your business, Mr. Consolo to have a service that operates a regular weekly basis? A. Yes, it is.

Q. Will you explain why it is important? Let me ask you this question. Is it important from the standpoint of obtaining fruit to export? A. Yes.

Q. In what respect? A. Well, most farmers, producers, brokers that you deal with in Ecuador like  
224 to sell bananas every week, especially a man who owns his own plantation, he has to cut his fruit every week to keep his farm in good condition, so when you go to speak to someone there to sell you bananas in Ecuador, the first question they eventually ask you, "are you going to ship on weekly service?" So you—if you have a weekly service to ship bananas from Ecuador, your chances of making deals with farmers or brokers are a much more advantageous position than if you did not have a weekly service.

\* \* \* \* \*  
225 Q. Are you importing bananas into the United States on the Grace Line vessels at the present time?  
A. Yes, I am.

\* \* \* \* \*  
227 A. Well, in order to have fresh fruit and to have the fruit on time for the ship rather than to let it lay there for one day so that if it lays there for argument sake in Puna waiting for the ship, naturally you will have a larger percentage of ripens when you come to the United States, because of the heat that fruit has received while laying there waiting to be put in refrigerated chamber.

Q. Are cutting orders sent out to growers? A. Yes.

Q. How far in advance of the vessel sailing? A. Generally it all depends in the areas you are cutting fruit from, it should be at least two or three days, the cutting orders



before the arrival of the ship at Guayaquil. It gives you an opportunity to send your barges up to the plantations where the fruit is being cut, placed on the barges, come down the river to meet the mother ship.

Q. Mr. Consolo, at page 4 of the report in Banana Distributors, Inc., Services Grace Line Docket 707 and 228 771 and 775, the board found and I quote, "Growing, shipping and marketing of bananas due to the nature of the commodity it requires a careful synchronized operation. Bananas grow rapidly and once cut from the plants are subject to rapid ripening. A shipper requires an assured amount of space in order to properly integrate his entire operation. There are no shore side refrigerated warehouses in Guayaquil and refrigeration does not prevent the normal ripening process. Shippers rigidly inspect bananas prior to their loading and stowing in order to prevent the shipment of over ripe for sikatoga diseased bananas, such bananas could adversely affect otherwise, 'healthy' bananas. Each shipper strives to have his fruit reach their destination as green as possible." Is that a fair summary of the facts of doing business in Ecuador?

A. Yes, you could say that.

Q. Is it true at the present time? A. Yes.

\* \* \* \* \*

229 Q. Do you consider yourself competitively disadvantaged by reason of the fact that you only have one arrival a week as compared with United Fruit, Standard Fruit and even as compared with Panama Ecuador Shipping Company?

Mr. Giallorenzi: I renew my objection.

Examiner Robinson: I overrule your objection. That he can speak from his own opinion.

The Witness: From my point of view, I think I am at some disadvantage by not having two arrivals a week where other companies in a competitive field have two arrivals or more per week.

\* \* \* \* \*

264 Q. You are presently shipping on the Grace Line?

A. Yes.

Q. How much space do you control? A. Presently?

Q. At the present time. A. About 19,000 cubic feet.

Q. Have you always held that same amount of space on the Grace Line? A. No, I did not.

Q. How much space did you previously control?

265 A. Prior to '57?

Q. When in 1957? A. October, 1957.

Mr. Giallorenzi: What date in October?

The Witness: I think it is the 11th. I think that was the change of the new contract, the 11th of October.

Q. Go ahead. A. From September, 1953 to November, 1953 I held about 18,900, I believe, cubic on the passenger ships of the Grace Line, and from November, 1953 to October 11, 1957 I held 18,900 cubic feet on the passenger ships and about 25,800 on the freighter ships, which was on a fortnightly service.

Mr. Giallorenzi: Was that 20,000?

The Witness: No. 18,900 on the passenger ships and about 25,800 on the freighters.

Q. How much space was taken away from you then in October of 1957, Mr. Consolo? A. I would say about 25,700 cubic fortnight. They didn't have a regular service. Now the freighters do have a regular service. I remained with about the equal cubic that I had on the passenger, about 18,900.

Q. How much space did the Board find you to be entitled to in Docket 717, Mr. Consolo? A. Forty thousand cubic weekly.

\* \* \* \* \*

267 Q. Will you first give us a description of the refrigerated chambers on the Grace Line, first on the Grace Line passenger ships, and then on the Grace Line freighters? Let us take the passenger vessels first, Mr. Consolo. A. Well, the passenger vessels, I believe there

is three holds for carriage of bananas, or hatches, and each hatch represents two chambers.

Q. Can you identify the hatches which carry bananas, Mr. Consolo? A. I think they are 2, 3 and 4.

Q. Hatch by hatch, who were the shippers as of October, 1957 on the passenger ships? A. On the passenger ships?

Q. Yes. A. We will start with 2. On lower tween deck to, I believe was the Swanee Fruit and Steamship Company with three-fourths of a chamber. Stanley Grayson in the chamber with one-quarter. On upper 2 was Compania Frutera Sudamericana.

Examiner Robinson: Off the record.

[Discussion off the record]

268 The Witness: Where were we up to?

Mr. Giallorenzi: You finished hatch 2.

A. Upper 3 was Mr. Noboa, Louis A. Noboa. On lower 3, Compania Frutera. On upper 4, Compania Frutera, and on lower 4 I believe it was Samuel Staff.

Q. Morey and Staff? A. Yes. I believe that's the way the contract was written, I don't know exactly. The other half of the chamber lower 4 was given to Lebantino.

Q. Would you care to refresh your recollection by referring to a list? A. Well, I will.

Q. To summarize, Mr. Consolo, speaking as of October, 1957— A. Yes.

Q. [Continuing] —will you name the shippers on the passenger vessels and the amount of space each shipper controlled? A. On the passenger ships?

Q. On the passenger ships. A. Frutera, three chambers, Noboa, one chamber, Swanee Fruit and Steamship and Grayson, one chamber.

Mr. Kharash: Together.

Q. How much did Swanee— A. I stated that before.

Q. They had three-quarters? A. Three-quarters.

269 Q. And Grayson had the other quarter? A. Yes.

Q. Go ahead. A. Morey and Staff, one-half and Lebantino, one-half.

Q. The total is six chambers? A. Six chambers.

Q. On the passenger ships? A. Yes.

Q. Let us take the freighters, Mr. Consolo. A. Yes.

Q. As of October, 1957, who were the shippers on the freighter ships, Grace Line freighters? A. You want me to identify how many chambers?

Q. Please identify the shipper and the number of chambers that he controlled. A. On the freighter ships there are four chambers, and hatch 2 and 4, upper and lower tween deck. On upper 2 in 1957 I. B. Joselow was the shipper on that chamber. In lower 2 it was the West Indies Fruit with one-half chamber. J. Marto, known as Martin Associates, one-quarter chamber, and one-quarter chamber I believe was Turino.

\* \* \* \* \*

273 Q. When did you first approach the Grancolombiana Line for space on their ships?

Mr. Lippman: Let me ask you this question.

Q. [Continuing] Did you have any negotiations with Grancolombiana for space on their vessels in 1954?

\* \* \* \* \*

274 A. I believe it was some time in 1954 that I called Grancolombiana Line with reference to some trial shipments on their ships.

Q. Go ahead. A. And we couldn't get along on the rate and that was the end of it at that time, in '54.

Q. Was Grancolombiana Line operating a regular weekly service in the trade at that time? A. Not to my knowledge.

Q. When was your next approach made to Grancolombiana Line, Mr. Consolo? A. I believe it was in the spring of—when did the present contract start, the first contract?

Q. I believe it was in July of 1955. A. Then it was in the spring of 1955.

Q. With whom did you discuss the matter of space, Mr. Consolo? A. With Mr. Borrero and Mr. Penaranda.

Q. Did you meet with these gentlemen? A. At first I

spoke to them on the phone and requested a meeting with them, and they granted a meeting, and we met at the  
 275 Grancolombiana office in New York City.

Q. When was this meeting? A. In the spring of 1955.

Q. What was the substance of your discussion with these gentlemen at that time? A. We discussed—trying to negotiate a deal for the transportation of bananas on the Grancolombiana ships from Ecuador to New York City.

Mr. Giallorenzi: Will you go a little slower, please?

The Witness: Okay.

Q. Continue. A. We went at length with reference to the holds—to the chambers on the Grancolombiana ships and I made inquiry as to the height of each chamber and then the rate that they were asking for the ships.

At this meeting I requested that I would like to see one of the ships, and the meeting was adjourned. I was to call the office and they were to let me know when one of the ships was in and be able to inspect it.

Q. Did they subsequently notify you when a ship arrived, Mr. Consolo? A. Yes, they did.

Q. Did you inspect it? A. Yes, I did.

Q. Was anybody with you at the time of your in-  
 276 spection, Mr. Consolo? A. I believe, if my memory is correct, Mr. Borrero was at the time—met me there.

Q. When did this inspection take place? A. Maybe a week or two weeks after the first meeting, or it may have been sooner or later.

Q. Did you have any discussion with Mr. Borrero aboard the vessel at that time? A. I think the only thing I discussed with him was that the bottom chamber was too high. The height was too high, it was not proper for carrying bananas and that I would call the office for another meeting.

Q. What do you mean by the chamber being improper or not having sufficient height for the carriage of bananas? A. I would say it was too much height for the carriage

of bananas. That it is not proper to store bananas twelve foot high or eleven feet six inches, which some of these chambers were, because if you stand three and lay one your bottom hands will get all crushed by the time they arrive in New York, so that you would have a larger percentage of what, we would call, maybe specials or rejects or crushed fruit that you would have to sell at a reduced price.

I told him it was not proper to carry bananas at that height or practical.

Mr. Blackwell: May I interrupt you for a second?

Will you give us the name of the ship?

277 The Witness: I don't remember. It was one of the typical ships.

Q. Of the space in the lower chamber, approximately what amount would be lost to you in stowage of bananas? A. About 25 per cent.

Q. Did you inform Mr. Borrero of this situation, Mr. Consolo? A. Not at the ship.

Q. Yes. A. We had a subsequent meeting.

Q. Let me ask you this, Mr. Consolo. Were you in the room during the time of Captain Sanchez? A. Yes.

Q. Did you hear him testify as to the vessels in the trade, with particular reference to the cargo space available in the lower hold for the stowage of bananas? A. Yes, I was here.

Q. Do you agree with his testimony? A. Yes, I do.

Q. On that point? A. Yes, I do.

Mr. Kharash: Could I clear up one point on the record, Mr. Consolo?

The Witness: Yes.

Mr. Kharash: You said the lower hold was not  
278 proper for the carriage of bananas. As I understood your later testimony, did you not mean that 25 per cent of the space could not be used for bananas, but that bananas could be stacked two stems on end and one laid parallel on top?

The Witness: Let me qualify that. I wouldn't say it

cannot be used economically for the proper stowage of bananas, I mean I have known people to stack bananas twelve or eleven feet high, but your arrival condition would not be as good as if it was stowed eight feet or eight and a half feet high.

Mr. Kharash: I am directing your attention just to the word "proper". It was proper to carry bananas to some extent in the bottom?

The Witness: Yes.

Mr. Kharash: And the extent was 75 per cent of the capacity of the lower hold?

The Witness: Yes.

Mr. Kharash: Thank you.

Q. Did you have a subsequent meeting with Mr. Borrero? A. Yes. I did. With Mr. Borrero and Mr. Penaranda.

Q. What occurred at that meeting? A. At that meeting there I went into length with him that the bottom chamber could only be utilized from my standpoint of view about 75 per cent, and they gave me figures as to what they wanted for the ships in its entirety, and I agreed to take the ship in the entirety providing that they would  
279 reduce from the rate offered me 25 per cent of the lower chamber only.

Q. Do you recall what the rates discussed were, what were the rates discussed at that time, Mr. Consolo? A. I believe for the Ciudad De Manizales, \$7,000, Ciudad De Quito, \$10,000, Ciudad De Medellin, \$13,000, Ciudad De Ibague, \$14,500, Ciudad De Cali, \$14,500.

Mr. Giallorenzi: I would like the record to show that the witness is reading from some document which I don't know what it is.

May I be told what document he is reading from?

Mr. Lippman: You may inspect it.

Mr. Giallorenzi: Will the record show that the witness was reading from a pro forma agreement of bananas, Flota Mercante Grancolombiana, S. A., dated July 1, 1955.

Mr. Kurrus: With whom, Mr. Staff?

Mr. Giallorenzi: No. That is just a pro forma, Mr. Kurrus.

Q. Did you make an offer to Mr. Borrero at that time, Mr. Consolo? A. At that time there?

Q. Yes. A. I am going back, just reciting from memory.

Q. Yes. A. I tried to calculate what the loss of the lower chambers that had this eleven to twelve feet high—  
280 and make an offer to him.

Q. Go ahead. What was that offer? A. I don't remember the exact figures, but we came to a calculation in the office, and he told me that he would send a cable to Bogota with my offer. What the exact figures were, I don't remember, because we came to some calculation, how much was lost from the lower chamber only.

Then I gave him an alternative offer at the office at that time, that if they wanted to leave just the two upper chambers that I will take those two upper chambers at their figure, and I also talked about concessions for ten trips, for 75 per cent minimum of the freight rate to ship on ten trips.

Mr. Giallorenzi: Will you go a little slower, please, Mr. Consolo.

Q. Were the freight rates discussed at that time, Mr. Consolo, relating in any way to the amount of cubic space available in the ships? A. I don't quite understand that question.

Q. Were your computations based upon the cubic space available for the stowage of bananas in the ships? A. We only computed—I'll say again—the lower hold, the lower chamber, which had eleven and a half or twelve feet high, and I made my own computations as to what I wanted to pay just for that lower chamber and deducted it from the amount that he wanted for the ships.

281 The Witness: Do I make myself clear?

Q. Then, as I understand it, you were seeking a concession from the amount quoted by Mr. Borrero in the amount of one-quarter lost cubic on the lower chamber?



A. In substance that's what it was, the discussions were about.

Q. Did you submit an alternative proposition? A. Yes.

Q. What was that proposition? A. That if they did not accept my proposition in the entire ship, that I would take the two upper chambers at the rate that they wanted based on the amount of cubic on those two ships and break it down in dollars and cents as to what they were asking.

Q. When was this discussion held? A. In the spring.

Q. Some time in the spring of 1955? A. Yes.

Q. Did Mr. Borrero tell you that he would relay your offer to his principals? A. It was either Mr. Borrero or Mr. Penaranda who said that they would send a cable to Bogota and inform me.

Q. Were you subsequently informed by Mr. Borrero?

A. I think I spoke to either of the two gentlemen, I don't remember, by phone.

282 Q. What report did you receive? A. That they had rejected the offer.

Q. Would you have taken space at that time, Mr. Consolo, if it had been offered to you on the basis of the upper two chambers? A. Yes.

Q. Would you have taken space if it had been offered to you on the basis of the entire refrigerated space with allowance in the freight rate in the amount of 25 per cent of the total cubic available? A. Yes.

Q. In the lower hold? A. Yes.

Q. But you were willing to pay for the full cubic space available on the upper two holds, is that correct? A. Yes, I was.

Q. Would you have taken one of the two upper chambers if it had been offered to you at that time? A. Yes, I would.

Q. Did Grancolombiana Line make you any proposition with respect to the entire refrigerated space of the vessels—  
A. No.

Q. [Continuing] —at that time? A. No.

283 Q. Did you have any subsequent meeting or discussions with any official of the Grancolombiana Line? A. Well, periodically when I used to come to New York, I used to call Mr. Borrero on the phone and told him that I would like—request the space on the ship again. He said they were going to come out with new bids when the present contract—prior to the present contract expiring, and that he would notify me to make a bid. So I believe some time—

Mr. Lippman: Let us take it chronologically, Mr. Consolo.

The Witness: Yes.

Q. These discussions that you testified a while ago took place in the spring of 1955? A. Yes.

Q. When did you learn that Grancolombiana Line had made a deal with some other importer? A. Some time in July of 1955. A new shipment was coming in Philadelphia on the Grancolombiana Line. I think I called Mr. Borrero and he said he had entered into a contract for two years on the ship going to Philadelphia, on the Grancolombiana ships.

Q. Did you make known to Mr. Borrero your continuing interest in the space? A. Yes.

Mr. Giallorenzi: I object to these questions. It is leading. I think—

284 Mr. Lippman: Mr. Consolo said on every trip he made to New York he called Mr. Borrero.

Q. When was the next occasion that you talked to Mr. Borrero?

The Witness: I didn't say every trip.

Mr. Lippman: Let me ask you this question.

Q. When was the next occasion when you discussed the possibility of obtaining space on the Grancolombiana vessels with Mr. Borrero? A. I think it was some time—later '55 or early '56.

Q. What were you told at that time? A. He told me they were under contract—prior to the contract expiring

they were going to request bids and that he would notify me.

Q. Did you keep in constant touch with Mr. Borrero?

A. Yes.

Q. When occasions permitted upon your arrival in New York? A. Right. Correct.

Q. In these discussions with Mr. Borrero did you discuss the possibility of taking space less than the entire ship?

Mr. Giallorenzi: I think this question is leading—I know it is a leading question.

Examiner Robinson: I agree with you.

Mr. Giallorenzi: I know the leading questions will save a lot of time, but I don't think you should put the  
285 answers in the witness' mouth.

Q. Mr. Consolo, will you tell us whether during these discussions you talked about space on the—

Mr. Giallorenzi: I still object.

Examiner Robinson: It is the same thing.

Mr. Giallorenzi: What did you talk about?

Mr. Lippman: Thank you.

Q. What did you talk about? A. Mr. Borrero—I told him if he would give me the entire space I would be willing to take less.

Mr. Dougherty: When was this?

Mr. Giallorenzi: Wait a minute.

Q. What period was covered by these discussions with Mr. Borrero, Mr. Consolo? A. I can't pick the exact dates.

Q. Up through which date, how far along are we now? A. '56. I spoke to him maybe a few times in '56, then in '57 when I came in in January I spoke to him again, and he told me that he would send me a bid for the new contract.

Q. Did you subsequently receive an invitation from Mr. Borrero to submit a bid? A. Yes.

\* \* \* \* \*  
287 Q. Mr. Consolo, referring your attention to page 1 of Exhibit 25— A. Yes.

Q. [Continuing] —does that letter invite your bid with respect to all or a portion of the refrigerated space?

Mr. Giallorenzi: I will have to object to that, the letter speaks for itself.

Examiner Robinson: That is true.

Mr. Lippman: I will withdraw the question.

Q. Did you submit a bid to Grancolombiana Line by March 10th as invited? A. Yes, I did.

Q. Is page 2 of the exhibit a copy of the bid you submitted? A. Yes. I did.

Q. Did you bid on the entire refrigerated capacity of the vessels, Mr. Consolo? A. Yes.

Q. Would you have taken less?

Mr. Giallorenzi: I object to that question. The  
288 witness just testified that he bid on the entire space of the vessel.

Examiner Robinson: That would not preclude him from saying he would take less.

Mr. Giallorenzi: I think now he has given his answer to the question, which answer implements an exhibit, a letter, which has been placed into evidence, and now I think he is trying to vary the meaning, not only of his verbal answer and the letter—

Examiner Robinson: That is not the way I understand it.

He said he asked for it all, and then he asked if he would have taken less.

Mr. Giallorenzi: That is what my understanding was, what the bid is. Now, I vigorously object to this.

Examiner Robinson: I see nothing wrong.

Mr. Lippman: His objection is overruled?

Examiner Robinson: Yes.

Q. Would you have taken less? A. Yes.

\* \* \* \* \*  
296 A. [Continuing] —I spoke to Dr. Dias on the phone. He was very disturbed over the letter. I said, the letter doesn't mean a thing if you are ready to give me space. He said, since your lawyer sent me a letter

I am turning over the whole matter over to my attorney, which I think is Mr. Giallorenzi. That is the last time I spoke to him or had any conversations with any officials of Grancolombiana Line.

Q. Mr. Consolo, has Grancolombiana Line refused to allocate to you space aboard their vessels at all times since November, 1955 to the present?

Mr. Giallorenzi: I object to the question.

Examiner Robinson: He is just asking him a question of fact.

Mr. Lippman: This is just to summarize the testimony so far. I think it would be helpful, a statement to that effect.

A. That is correct.

Q. Mr. Consolo, your complaint in this proceeding requests an allocation of space to you in the amount of 50,000 cubic feet or such lesser amount as the Board should find to be fair and reasonable allocation?

A. Yes.

Q. Do you now require 50,000 cubic feet of space, Mr. Consolo? A. I would take 50,000 feet or less.

\* \* \* \* \*

Q. How many stems could be shipped in 50,000 cubic feet of space? A. It depends on the size of the space.

Q. Approximately. A. And the height of the chambers, what you want to utilize.

Q. Can you give us a figure? A. An approximate figure?

Q. Yes. A. I'd say between 12,500 and 13,000 stems.

\* \* \* \* \*

306 Q. Mr. Consolo, I show you a copy of Exhibit No. 10. A. Yes.

Q. —which is in evidence. A. Yes.

307 Q. —which purports to be a photograph of the refrigerated space aboard the Cartagena De Indias.

Examiner Robinson: Off the record.

[Off-the-record discussion]

A. Yes.

Q. Is that space desirable? A. Yes.

Q. Is it suitable for the carriage of bananas for more than one shipper? A. Yes.

Q. Is it suitable for the carriage of bananas on one level of more than one shipper? A. On a chamber, you mean.

Q. Yes. A. Yes.

Q. Do you see why two or more shippers could ship their bananas in a single chamber? A. Yes, sir. Two shippers could ship in one chamber.

Q. Would you be interested in shipping on the Grancolombiana Line on that basis, Mr. Consolo? A. I would, yes.

Q. I put before you, Mr. Consolo, Exhibits 14 and 13 which are in evidence. A. Yes.

Q. —showing the side ports on the upper tween  
308 decks of the Cartagena De Indias. A. Yes.

Q. —which, as I understand, is the class of vessel now in service, and I ask you now whether that space appears to be desirable? A. Yes.

Q. How would you compare it with the space along the Grace Line vessels? A. You cannot tell exactly, but I would say it is comparable. I don't see much difference between the Grace from what I see on this photograph.

Q. Would you consider it as good as what is available on the Grace Line? A. Yes.

\* \* \* \* \*

383 Cross-Examination

By Mr. Giallorenzi:

\* \* \* \* \*

460 Q. And you know also of your own knowledge in addition to their testimony that the refrigerated space in the Grancolombiana vessels is suitable for bananas located in No. 3 hold? A. Yes.

Q. Upper tween deck, lower tween deck, and lower hold? A. Yes.

Q. And you also know that hold is served from side ports, port and starboard, upper tween deck? A. Yes.

Q. Those are the only two? A. Yes.

\* \* \* \* \*

507 Q. Now, you subsequently ascertained that Grancolombiana had made arrangements and did enter into a contract with Morey and Staff for two years, isn't that right? A. Yes.

Q. When did you first learn that? A. Well, I first learned that from the banana trade, put it that way. Then secondly, I personally learned it from Mr. Staff, call me and we had many pleasant discussions, and he informed me at that time there was a contract existing between  
508 himself and Morey and Grancolombiana Line.

Q. By the way, when did you first meet Mr. Staff? A. I don't know whether it was probably right after his first or second shipment, was in '55.

Q. And do you know him socially? A. Not prior to that.

Q. And this first meeting that you had with Mr. Staff, did you know where you met him? A. I don't remember, I think he called me at the St. Moritz Hotel, invited him down to have coffee, and talk, I think it was the first meeting, he probably kept notes.

Q. Do you know what you talked about? A. Just general business, nothing specific.

Q. Did you inquire to him about his contract? A. No, I think he voluntarily told me he entered into a contract with Grancolombiana.

Q. Did he show you the contract? A. No, he didn't show me.

Q. Did he tell you the terms? A. No, not that, just told me he had a contract with them, I didn't ask him.

Q. Did he tell you about the price he paid for it? A. I don't think so.

Q. He didn't tell you that? A. Not at that meeting, anyway.

509 Mr. Kharasch: Mr. Examiner, I had hoped we could progress faster that way, if we sat here quietly. I request that the Bench address Mr. Giallorenzi and ask him to stick a little closer to the facts relevant to the case, and not coffee at the St. Moritz.

Examiner Robinson: What is the purpose of it, Mr. Giallorenzi?

Mr. Giallorenzi: I am going to tie that in with certain other testimony, I think the issue of credibility has come into the fore at this particular point, and I want to tie that in with other proof that I am offering at a later time in this proceeding. So that we may take a look at this whole picture, the way—

\* \* \* \* \*

609 Redirect Examination

By Mr. Kharasch:

\* \* \* \* \*

634 Q. There may be a hole in the record on this point, Mr. Consolo. Between 1955, July 1955, and March 1957, did Grancolombiana at any time advise you of the price being paid for space, or give you a chance for space on the ship at the price that was then being paid, the rate?  
A. I have never been advised as to what rate.

Q. The first time you saw the rate was in the papers in connection with this case, is that correct? A. I don't follow your question.

Q. When was the first time that you actually learned what rates Grancolombiana was collecting from its present shippers, and I show you Exhibits 15 and 16 which are the Grancolombiana contracts, and ask you if these contracts gave you the first information. A. As to  
635 the exact amount paid?

Q. Yes. A. Yes, I believe the contracts were.

Q. The contracts are the only information you have? A. Of the exact amount.

Q. From Grancolombiana? A. Yes.



Q. Mr. Consolo, I believe on either direct, or cross-examination, you testified that when you talked to Mr. Borrero between 1955, and 1957, on your trips to New York that Mr. Borrero told you that the space was under contract, is that correct? A. Yes.

Q. Would you have taken space if it had been made available to you prior to the time the first Morey-Staff contract in 1957, that is between 1955 and 1957? A. Yes, I would have taken space.

\* \* \* \* \*

655 Q. Mr. Consolo, prior to bidding on the Gran-colombiana space on March 6, 1957, or any time when you had these discussions with Mr. Borrero did you get to the point where you offered them any evidence of your financial ability, or stability? A. Never asked me.

656 Q. Never asked you? A. No.

Q. Isn't it a fact you were never asked because your offers were unacceptable, and there was no need to continue? A. To the best of my knowledge that is correct.

\* \* \* \* \*

661 **Louis F. Meyer.**

being first duly sworn, testified as follows:

# Direct Examination

By Mr. Lippman:

Q. Will you state your name for the record, please, Mr. Meyer? A. Louis F. Meyer.

Q. Where do you reside? A. 1664 Macombs Road, Bronx.

Q. In what business are you engaged? A. Well, I am a commission merchant, and broker.

Q. With what company are you affiliated? A. H. Dixon & Company.

Q. Are you an officer of that company? A. I am president.

\* \* \* \* \*

662 Q. How long have you been associated with R. Dixon & Company? A. Since 1909.

Q. Who are the importers of bananas at R. Dixon & Company as represented at the present time? A. The International Banana Corporation, and Consolo, both relatives.

663 Q. You mean Philip R. Consolo? A. That's right, and Charles.

Q. His brother, Charles Consolo? A. That's right.

Q. How long have you been representing the Consolo brothers? A. Since October 21, 1957.

683 Cross-Examination

By Mr. Giallorenzi:

Q. Mr. Meyers—

Examiner Robinson: Meyer.

The Witness: Singular.

Q. Mr. Meyer, when did you become the commission agent for International Banana Corporation? A. In October 21, 1957.

Q. When did you become the commission agent, or account, rather for Novoa? A. Well, originally I was to take Novoa's account in October 21st, but I had permitted someone else to handle it. They didn't have enough fruit.

Q. They did not have enough fruit? A. That's right. The party who took it over.

Q. Who was that? A. Andes.

Q. Andes Fruit Corporation? A. That's right.

684 Q. How long did Andes Fruit Corporation act under Novoa? A. Since that time, October 21st.

Q. At the present time are you the agent for the sale of the Novoa bananas? A. That's right.

Q. When did you take this contract over again from Andes? A. Well, it was on these chartered boats; that's where I took it over.

Q. The regular Grace Line boats. Andes Fruit still acts as selling agent for Novoa? A. Part of it, yes.

Q. Part of it? A. Yes.

Q. Do you know who acts as selling agent for the other part of the Novoa fruit? A. I have an idea. I don't know definitely.

Mr. Kharasch: May we inquire as to the relevancy of investigating Mr. Novoa?

Mr. Giallorenzi: Yes. I want to find out how many shippers Mr. Meyer acts for, and I will tie it up with some other questions.

The Witness: Well, understand this international is the same as the Ecuadorian Banana Company prior to October 21st. See, it is the same owner. He has been shipping to me for 10 years, but he changed the name, see?

Q. Well, who is that? A. Mr. Josloe.

Q. Now, getting back to Novoa. At the present time are the regular Grace Line vessels, Andes Fruit Company acts as agent, selling accounts on some ships, and someone else acts on others? A. That's right.

\* \* \* \* \*

688 Q. In other words, when you get an order, let us say from a customer in Chicago for 500 selects, and you have two or more similar shippers on one vessel, all giving you outturning select fruit, or at least part of it, you would put all of that fruit from one customer you designate to the jobber, or would you— A. (Interrupting) I would allocate.

Q. You would allocate? A. As a rule.

Q. As a rule you would spread it out? A. That's right.

Q. In other words, if you had an order for 500 stems of selects from, let us say, some chap in Chicago, you might take 200 from— A. (Interrupting) No, take one load, see a trailer constitutes about 250—275 bunches.

689 Q. Yes? A. So therefore if he wants two loads, I give one from Josloe, one from Consolo, one from Lovett, see?

Q. In other words— A. (Interrupting) I try to spread them out.

Q. You would allocate them from the various shippers? A. That's right.

Q. These jobbers then would be considered customers of R. Dixon, isn't that correct? A. That's right. They are not here, and they expect me to fill their orders.

Q. They are not customers of the shippers, or the importers? A. No.

Q. Definitely not? A. Oh, no.

Q. Do these customers, or jobbers, as I will call them know who the importers are? A. No. As a rule no.

Q. They wouldn't know whether they got their fruit from International, or Dover Banana? A. That is right.

\* \* \* \* \*

700 Q. Let's say from all the source of supply, what percentage does United bring in the North Atlantic ports? A. I really didn't figure it out. I imagine they bring in 50%.

Q. And Standard? A. About 25%.

Q. And the balance, 25%, is brought in by? A. Grace Line.

Q. Grace Line, as I call them, the independents? A. That's right.

Mr. Lippman: I think the record should also show the importations of the Grancolombiana Line; that should be taken into consideration also.

The Witness: Yes, but I was only confining myself to New York.

\* \* \* \* \*

702 Q. What percentage of bananas into the North Atlantic ports of the Grancolombiana vessels brought in, assuming they are bringing in about 14,000 a week— A. (Interrupting) 14,000 a week?

Q. Yes. A. Now you are talking about independents.

Q. I am talking about the overall market. A. Well, the

independents, mind you, have no control over the United or Standard; that's a separate entity; that has nothing to do with them. Therefore, you have to, if you want a figure on guessing the percentage, or what percentage the Grancolombiana Line bring in as compared to the Grace Line, what is their percentage, the Grace Line?

Mr. Lippman: That's the question.

Mr. Giallorenzi: No.

Mr. Lippman: I don't believe the witness understands your question, Mr. Giallorenzi. I request you rephrase it, or ask another one.

Q. What effect, if any, has the importation of the Grancolombiana vessels have on the banana market from 1955 on? A. Well, in view of the fact they don't compete with me, I wouldn't know.

. . . . .

829 Mr. Kurrus: Certainly, even though we have requested refrigerated space sufficient to hold up to 10,000 stems of bananas roughly, we consider that on the basis of the facts so far introduced that we are entitled to approximately, or I will say to half of the refrigerated space rather than all of it.

We consider that Mr. Consolo is, of course, qualified, and on the basis of the statement that he would not be willing to ship if anybody else is shipping on the Grancolombiana Line ships, we considered the only two qualified shippers so far as appeared in the record.

Our reparation case is based on half of the refrigerated space.

Secondly, I want to say with respect to the case itself.

We would like to prove our part of the case concerning the claim that Grancolombiana Line is a common carrier, and with respect to the damage aspect of the case we would like that delayed for the following reason:

A strange situation prevails here in that the only person who is benefiting from a delay of this proceeding is

the Pan-American Ecuador Shipping Corporation owned by Mr. Staff and Mr. Morey, as I understand it. Our primary business is the banana business and we are most anxious to get on the Grancolombiana Line ships as promptly as possible. We would much prefer to be on the ships than to recover damages.

We considered that the issues on the common carrier point are relatively simple, and that an expeditious decision could be rendered both by the Examiner and by the Board, and for that purpose, since the case has proceeded so long and since our damage case will take at least as long, as I see it, maybe longer, we would like an immediate decision from the Examiner and from the Board on the question of whether or not the Grancolombiana Line is a common carrier. We would like that decision right away.

It seems to me that if the damage part of this proceeding is going to go on and we are going to be delayed and I am not saying anybody is delaying this, except the necessity of proving the case. If the case is going to be delayed, we are going to be that much further behind and never get on the Grancolombiana ships, and of course  
831 if the Grancolumbiana Line is found not to be a common carrier, that would end the case.

Therefore, I would suggest we have certain witnesses who we have to put on in New York, one of whom does relate to the damage aspect of the case, but I would suggest that when we get to Washington that the witnesses who are there be limited only to the common carrier issue and we would request that the decision or the procedure be expedited.

I would suggest oral argument before the Examiner at the conclusion, that exceptions to the Examiner's recommended decision be limited to seven days. That the Examiner notify the Board that there is an urgency attending to this matter and request that the Board hear oral argument on the matter promptly after the Examiner's decision is granted.

If necessary, I will make this in the form of a motion, and I hope the people here will agree to the request for what in effect, I suppose, is a severance of the proceeding just like was done in the Grace Line case.

Mr. Kharasch: Before responding or commenting on Mr. Kurrus's motion, may we have a couple of minutes to consult, please?

Is it all right, Mr. Giallorenzi?

Mr. Giallorenzi: All right.

Examiner Robinson: Certainly.

(Off-the-record discussion)

Mr. Giallorenzi: Since no officer of Grancolombiana Line is present at this time—

Mr. Kurrus: It seems to me that it does not involve any issue of authority from a client.

What I am requesting is that our case be distinguished—it seems to me that the complainant has the right to split up his case the way he desires. I understood that Mr. Giallorenzi, at the beginning, wanted to go through this procedure. I am requesting that the procedure be adopted now in order to expedite a decision.

We can either get on the ships right away or we cannot get on the ships right away, and I don't see the relevancy of whether his client is here or whether he is not here.

Examiner Robinson: You can say on Tuesday what you want to, Mr. Giallorenzi.

Mr. Giallorenzi: I can say on Tuesday, and also about this time which Mr. Kurrus has been talking about, seven days.

Examiner Robinson: You just think over all of that. You will know what he said.

Mr. Giallorenzi: Okay. He has made some motions that I wanted to say something about.

Examiner Robinson: Mr. Kharasch is going to say something first.

Mr. Kharasch: Are you suggesting that we hold it for Tuesday in Washington, Mr. Examiner?

Examiner Robinson: You go ahead and finish what  
833 you were going to start to say when you said you wanted a conference with your associate.

Mr. Kharasch: We thoroughly agree that it is most urgent to get a quick ruling as fast as possible from the Examiner and the Board on the issue of Grancolombiana status as a common carrier, and we are pleased to join into a similar motion with respect to our case, if that speeds things up.

Mr. Giallorenzi: I just didn't quite get this whole thing, Bob.

Mr. Kharasch: I say we are pleased to do the same thing with our case if that speeds things up, that is, immediately sever the common carrier issue to proceed with what evidence, if any, Grancolombiana has that it is not a common carrier and at that point just to get as quick as possible a report on the common carrier issue.

Mr. Lippman has suggested that appropriate procedure would be that followed in the Charter-Hire case. I believe that is substantially the procedure suggested by Mr. Kurrus.

Mr. Kurrus: Yes.

Mr. Kharasch: The law is crystal clear on this subject and it does not require elaborate briefing.

Mr. Giallorenzi: Off the record.

(Off-the-record discussion)

Mr. Kharasch: One more point on the record.

You want to be clear that our evidence is in now  
834 on the reparations except for one fragment that has not come along. We are not foregoing our evidence in any way, we are just suggesting that the quick procedure—

Mr. Kurrus: In that respect I want to say we are not giving up our reparations claim, we have one witness we are going to put on in a moment or two which relates to the reparations figure of our case.



The only thing we want is expedition in order to save Grancolombiana further reparations and get on the ships, and to make money the way we should be making money, by selling bananas rather than suing Grancolombiana.

Mr. Kharasch: It being understood we would have to continue with the same record we have already made.

Mr. Giallorenzi: Mr. Examiner, Mr. Staff would like to address you.

Examiner Robinson: Very well.

Mr. Kurrus: What is Mr. Staff's status, Mr. Examiner, at this time?

Examiner Robinson: He is not testifying. Mr. Staff wants to make a statement.

Mr. Staff: Mr. Examiner, the move by counsel is crystal clear. We removed ourselves as an intervenor. We will move to become an intervenor.

What has happened here is so crystal clear—if they want the Examiner to rule peremptorily—it is clear that  
835 what everybody here is trying to do is get off the hook, including Grancolombiana, and leave the Panama-Ecuador Company holding the bag.

Mr. Giallorenzi: I object to that statement about Grancolombiana.

Examiner Robinson: We will not have any argument on any of this.

Mr. Staff: When the Panama-Ecuador Company gets ready to testify it will prove by its testimony that both of these plaintiffs never really wanted to get on the Grancolombiana Line, No. 1.

No. 2, that the Panama-Ecuadorian Shipping Company and its affiliates have lost money shipping on the Panama-Ecuadorian Shipping Company, and the Equadorian Fruit Company, and that their reparation chances will, in the end, be nil.

We will prove that one of them—one of these plaintiffs has already told the Grace Line that as of a certain date, in the presence of myself, and he will not deny it, had lost \$49,000 shipping on the Grace Line.

Examiner Robinson: Let us not go into detail. Just tell me in brief what your general idea is.

Mr. Staff: The idea is this, Mr. Examiner, open and above board: Is that the United Fruit Company is not shipping anywhere its normal percentage of fruit at this particular time.

Examiner Robinson: Let me cut you off still more,  
836 Mr. Staff.

Mr. Giallorenzi: Why don't you tell him what you want.

Mr. Staff: We intend to intervene and we do not intend to be steam-rolled into any position.

Examiner Robinson: We do not want any comments on it.

You have made your point.

Mr. Kharasch: I want to request an opportunity to be heard on any petition which you may receive in the future from Panama-Ecuador Shipping Company or Mr. Morey or Mr. Staff.

I want to be heard on the petition intervening if they file one.

Examiner Robinson: Does anybody else have to say something, not on that?

Mr. Kharasch: Off the record.

(Off-the-record discussion)

Examiner Robinson: Are you ready to proceed with your witness, Mr. Page?

Mr. Page: Yes.

• • • • •

878 Examiner Robinson: We will proceed, gentlemen.

As I recall, you made the motion to sever, Mr. Kharasch.

Mr. Kharasch: Mr. Kurrus did.

Examiner Robinson: I said I would like to hear from you today on that.

Mr. Giallorenzi: I had an opportunity to talk to my clients over the weekend, and in discussing the matter with them we feel that it would serve the best interests of Grancolombiana to hear all these issues at one time and dispose of them.

We have made arrangements with witnesses, particularly Dr. Diaz, to come here from Bogota, which he has, for the purpose of testifying in this matter. In fact, he had appointments to go to Spain which he put aside for the purpose of being available here. Since he has come up and we will need him to testify, particularly on the reparations angle, and also on the common carrier question, we feel that if we could sever at this particular time it would work a hardship upon him. He is a very busy man, running this company from Bogota with the services which you are acquainted with.

In addition, our method of presentation has been now changed and geared to the ruling which you made at the beginning of the hearings, that we would hear the reparations suits first and then continue on with our declaratory order.

879 In view of those facts we must oppose the application for a severance.

Examiner Robinson: Let's see if our thinking is the same on the ruling that I made. I don't think it was so all-inclusive that you couldn't sever. What I meant was that the basic claim, whether or not it was the reparation, should go on first and not simply reparation.

Do you understand what I mean?

Mr. Giallorenzi: Yes.

Examiner Robinson: How long do you think you would be in finishing your reparation feature, assuming we continued with that phase, both of you?

Mr. Kharasch: I would like to make one comment on Mr. Giallorenzi's statement. If Dr. Diaz is in the country I think very properly he could be accommodated at this time to testify.

Examiner Robinson: How much would you have on your reparation?

Mr. Kharasch: Not very much more.

Examiner Robinson: What do you mean by "not very much more"?

Mr. Kharasch: Very brief. A witness very briefly and possibly some additional examination of someone from Banana Distributors, which was at one time Mr. Consolo's selling agent.

Examiner Robinson: How about you, Mr. Kurrus?

880 Mr. Kurrus: It is difficult to say, Mr. Examiner.

We might have a week and we might have as much as three weeks. I would like to respond to Mr. Giallorenzi after having told you that I can't predict exactly what the time would be, but I will tell you there would be a substantial period of time to prove our case.

It seems to me that we have the right to put our case on in the manner we wish. The situation here is somewhat unusual in that the only party, and I use the word "party" not to indicate people in this case—the only company that is being benefited by the delay of this proceeding is the Panama Ecuador Corporation.

We want to get on the ship. We don't want to build up a reparations case against the Grancolombiana line. We'd rather make money, as I indicated at the hearing in New York, by shipping bananas rather than building up reparations.

It is a situation, it seems to me, where equity calls for a prompt decision on the common carrier issue. If the common carrier issue is decided for the Grancolombiana line, in other words, if they are declared not a common carrier, then of course the case is over.

If, on the other hand, they are decided to be a common carrier then I assume that within a relatively short period of time we, and perhaps other people, are entitled to ship bananas on their ships.

881 It seems to me that it is in the best interests of everybody to have that issue determined as quickly

as possible. If we wait on the reparations case, as I say, our reparations case is necessarily lengthy. We realize Mr. Giallorenzi has to have a considerable period of time to cross-examine on the case. It is not only lengthy but you are building up a substantial record that is going to take a considerable period of time to brief.

It is going to take a considerable period of time for the Examiner to decide the case, and of course the subsequent procedures before the Board are also going to be time-consuming. It is that procedure that we'd like to short-circuit for the moment.

We are not asking to give up our reparations case. We only want a decision on what we consider to be a relatively simple part of the case in view of two previous Board decisions, namely, whether Grancolombiana must or must not be a common carrier.

Mr. Giallorenzi previously wanted to try the common carrier issue separately.

Examiner Robinson: I might add that I was in general accord because I think it is most foolish to put in reparations in a case.

Mr. Kurrus: I am in accord, too. I wasn't a part of the beginning aspects of the proceeding. We got  
882 into the proceedings sometime after the thing had gotten under way. We weren't a part of the first prehearing conference.

As far as Mr. Giallorenzi's witnesses are concerned, of course, Mr. Kharasch is agreeable and we are agreeable to having him put on anybody he wants. If he believes that some of these witnesses were going to be used to rebut part of our case we'd be perfectly willing to put on that part of our case which they would rebut and let them go.

In other words, I can't conceive that Dr. Diaz is going to be a rebuttal witness on the availability of bananas in Ecuador or the price at which bananas could be procured in Ecuador. I can't conceive that he is going to be a rebuttal witness on the selling price of bananas in Ecuador.

If there is any part of our case that Mr. Giallorenzi wants to go on, we will put it on.

I don't think that this proceeding should under the circumstances be delayed by the lengthy hearing procedure that is necessarily involved in having both of these reparations cases go ahead at this time.

We want basically a decision on the common carrier issue. We want it promptly and we want to know whether or not we are entitled to be on the ships. Of course if we are not entitled to be on the ships, then everybody is wasting his time here.

It seems to me that we ought to have that issue  
883 determined promptly and expeditiously, as Mr.

Giallorenzi himself wanted, at least up until the first and second prehearing conferences.

Examiner Robinson: Mr. Blackwell, do you have anything you want to say?

Mr. Blackwell: Yes, Mr. Examiner. I think to a large extent many of the things that Mr. Kharasch, Mr. Kurrus and Mr. Lippman would like to accomplish by severance at this time could be just as effectively accomplished if we went ahead in the presentation of evidence and testimony in this case as we have in the past.

I think we will admit that although the taking of testimony here has been somewhat slow, it has been quite orderly. If we change it now the record might be disjointed to such an extent that it actually would retard rather than help the orderly development of the case.

I would, however, join with the movement in severing the case after we have established a record in the case. I don't think that it would amount to a great deal of delay. I don't know, of course, how long Mr. Kurrus is going to take with his complete case or how long Mr. Kharasch will take to wind up his case, but even if it is a delay, say, of two weeks that is hardly an unreasonable time figuring the time when the complaints were first filed.

The real delay, if we want to call it that, is in the  
 884 decision-making process of the Board, not in the  
 gathering of the record for that decision, and there  
 I would welcome and join in a severance at the point where  
 the record had been fully developed.

Another thing, Mr. Examiner, it might very well be possible that in arguing what we think to be the facts in relation to common carriers, some of the facts that appear ostensibly to be related to the question of reparations might equally be applicable to the question of common carrier. I think if we had a full record before us we could take up first in any short procedure the parties or the Examiner so desire the common carrier question and then leave for the ordinary course of this position before the Board the question of reparations.

Examiner Robinson: When does Dr. Diaz plan to be here?

Mr. Giallorenzi: He is here. He has been here several weeks, I think.

Mr. Kurrus: I would like to make a further comment, Mr. Examiner, if I might. It seems to me that it is the right of the complainants to decide how their case should proceed, and I don't really concede that, although I appreciate the arguments of Mr. Giallorenzi or even Mr. Blackwell to enter into this discussion, if we want to  
 885 proceed with the common carrier part of our case it  
 seems to me that that is basically up to us. That is  
 what happened in the first Consolo case. That is  
 precisely what happened in the first Banana Distributors case against the Grace Line, and what Mr. Blackwell says doesn't exactly make a great deal of sense to me because it is our burden to prove that they are a common carrier.

We might rest on the decision of the Consolo and Banana Distributors cases against the Grace Line, and perhaps the burden of overcoming those cases is on the respondent; but nevertheless it is our burden one way or another to prove that they are common carriers.



Perhaps some of the testimony on reparations would be relevant to the issue of common carriage, but we will put the relevant evidence in, and I think you have to leave it up to us to make out our case.

In other words, this is a complaint and answer case, and whatever the function of public counsel or anybody else is in the case it is basically up to the parties to prove what they have to prove.

Now, another thing is, once this common carrier issue is settled it may possibly be that some settlement could be reached between the parties, and it is always in the interests of the Board and any court to further rather than to hinder a possible settlement.

It seems to me that if we go ahead with this complicated reparations case we are laying on the record some-  
886 thing that might possibly be of no value, something that is going to cause a great deal of hardship to the complainants who want to get on the ships right away.

A two-week delay is considerable. Any delay is considerable when we are trying to get on the ships right away, and it seems to me that the delay could be much longer than two weeks. It could be two months and maybe even a year if we go ahead with this type of procedure that is contemplated now.

Mr. Rosenzweig: Mr. Examiner, I would like—

Examiner Robinson: What is your name?

Mr. Rosenzweig: I will state for the record my motion.

Examiner Robinson: State who you are.

Mr. Rosenzweig: My name is Elias Rosenzweig of the office of Herman Goldman, 120 Broadway, New York, appearing for Panama Ecuador Shipping Corporation on whose behalf I intend, by this afternoon or tomorrow morning at the latest, to file a petition for leave to intervene in this proceeding.

In the petition in this case for reparations it is true, as these gentlemen have pointed out, that they have to establish the common carrier status of Flota because if



Flota is not a common carrier necessarily their claim for reparations is false.

I intend to show convincingly, I believe, on behalf of Panama Ecuador, which holds the forward booking  
 887 arrangement with Flota, that even if the Board should determine that Flota is engaged in common carriage that nonetheless the forward booking arrangement which Panama Ecuador has with Flota is the only booking arrangement which can be made in view of the character of the vessels which are engaged in the trade; and that such being the case, even though it might be held ultimately that Flota was engaged in common carriage there could be then necessarily no reparations owing to the petitioners in this case nor any right in those petitioners to get on the ships.

That issue, I say, is intrinsically bound up with the issues which have been presented in the petition of Flota for a declaratory order.

It may be presumptuous to expect that you and the Board will allow intervention, but I say this in the nature of a caveat that if such intervention is allowed the position which is going to be taken by Panama Ecuador necessarily interrates the proceedings, both proceedings before the Board, and that therefore in view of that fact the petitioners should in the orderly course of presentation complete their presentation of their entire case before the case goes forward to other issues.

Examiner Robinson: Before I make a ruling I just want to answer one thing that Mr. Kurrus said, that normally

I think complainants do have the general right to  
 888 proceed with their case in the manner in which they want, but unfortunately fifty percent of this, that is, one of the complainants is not completely free of having been tarred, by which I mean he asked for one thing at one time and something else at another. I just want to state my position on that.

I don't think that Consolo necessarily could have the same valid argument as Banana Distributors in view of

the proposition. That is not necessarily controlling. I want to put myself in this position, that you can't always control which way you want to present your case.

Mr. Kharasch: I don't understand your last statement.

Examiner Robinson: For instance, you wanted to go ahead with the reparations initially.

Mr. Kharasch: We thought it would be more expeditious.

Examiner Robinson: That is why I am separating you from Mr. Kurrus. That does not necessarily mean that you have a right to control your case at this point, but I say that would not stop me if I consider it. I thought I ought to express myself just generally on the subject.

I will go ahead and rule on the motion. I think it is perfectly proper that even though I said originally the two should be joined that it is probably better if we severed

889 them without, however, prejudicing Mr. Giallorenzi's position, in view of his witness, and so forth. In view of what Mr. Kurrus has said, that he would put on any witness even though it is a reparations witness that would be needed by Mr. Giallorenzi, I think with that understanding we ought to proceed with the merits.

Mr. Giallorenzi: I may say this, that this ruling has prejudiced me to this extent, that if we delay now and take only the common carriage issue and that is decided a month hence or maybe two months and then if by some strange coincidence these fellows should get some reparations, it would be enhanced or enlarged by this additional delay. I think that there should be a cut-off date.

I think they are entitled to nothing, and I think there are several cut-off dates that we can choose; but I think that by now extending this period of time, which will necessarily eliminate the hearings on reparations until the time of the deciding of the carriage issue, it would be piling up damages, if they are entitled to any, against Gran-colombiana.

That is one of the very reasons why I had opposed the severance, because when I discussed it with my clients they said that by agreeing to a severance you are enlarging the

period of damages. As I say, we are convinced they are not entitled to a nickel, but you do have that situation facing us and so we do suffer prejudice.

Examiner Robinson: On the other hand, you may  
890 find out that by separating them you are better off than you were, but in any circumstances that could be something you could argue in case it ever went that far and you would have a very good ground for presenting your case.

With that in mind, we will proceed.

Mr. Kurrus: I might say that if Mr. Giallorenzi has a list of the witnesses he would like us to produce we will produce them, or if he wants to indicate any part of our case that he wants us to put on so that he can accommodate his witnesses and make full utilization of the talents of Mr. Diaz I would suggest he give us a statement to that effect within the next day or so and we will make the arrangements accordingly.

Examiner Robinson: Yes. Under the circumstances I expect the parties to give me full cooperation, in view of the disposition that has been made, so that nobody is going to be prejudiced.

\* \* \* \* \*

894 Mr. Kharasch: Mr. Examiner, at this point we have concluded our case on the issue of common carriage. We rest our case on the issue of common carriage. We do have, as I said, a little bit more on the issue of reparations.

\* \* \* \* \*

899 **Shillo Adir**

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kurrus:

Q. Would you state your name and address, please? A. Shillo Adir, 271 Church Street, New York City.

Q. What is your position with the complainant, Banana Distributors, Inc.? A. I am secretary-treasurer of the company.

. . . . .

902 Q. Do you have any steady customers who rely on your importations? A. I would say we have some customers that rely exclusively on our own importations, but mostly they buy from other companies and perhaps from as many as three or four.

Mr. Giallorenzi: I would like to be heard at this moment. I don't see the relevancy of this line of questioning.

Examiner Robinson: I am allowing it on the basis that it is showing what kind of an organization it is and that he has been importing bananas, is capable of importing them and disposing of them.

903 Is that basically what you are doing?

Mr. Kurrus: That is basically it. Mr. Examiner, one of the aspects of proving that we are entitled to get on the ships right away is that we have some ability. We are not going into proving our entire damage claim at this time, but of course Grancolombiana Line might be a common carrier and might not have to put anybody on the ships if they weren't qualified. We want to prove our basic qualifications.

Examiner Robinson: That is what I thought you had in mind. Otherwise I would have objected myself.

. . . . .

920 Q. On the basis of your experience as a banana importer and banana distributor, is there any significant difference between the Grace Line operation and the Grancolombiana operation which would prevent the commingling of fruit on the Grancolombiana Line vessels? A. No, there is not that I can see.

Q. Let me ask you this. Do you know of the Panama Ecuador Shipping Corporation? A. I never heard that name before this trial. I knew them as Ecuadorian Fruit and Shipping Company.

Q. But you understand that is the same company? A. Yes, sir.

Q. Are they a direct competitor of yours in the importing and distribution business? A. Yes, they and all the other importers of bananas.

Q. Are you familiar with the quality of bananas which they have brought into the United States? A. Yes, I am, and I believe that their bananas most of the time are better than ours. That's one of the things we discussed about in talking to Mr. Friedlander. We had hopes that his knowledge of Ecuador—and he does have knowledge of that area—would help us in getting bananas of the type that they have been bringing in Philadelphia Grace Line boats.

Q. As far as the quality of the banana when it arrived in the United States, which I take it has something to do with the quality of the service which Grancolombiana Line offers, is that, to your knowledge, satisfactory? A. I know that for the past two years or such it has been very satisfactory, or three years. Earlier than that in 1953 we had some experiences where we sold bananas for someone who imported on the Grancolombiana Line and their carriage of bananas was completely unsatisfactory. But today they bring them up in very good condition.

• • • • •  
935 Cross-Examination

By Mr. Giallorenzi:

• • • • •  
983 Q. Are you buying bananas from Arosemena at the present time? A. No, sir.

Q. When did you stop buying bananas from him?  
984 A. I believe it says April 1, 1958.

Q. So at the present time you have only one supplier? A. That is correct.

Q. You don't have any written agreements with any other suppliers? Do you have any written agreements with any growers? A. No, sir.

Mr. Kurrus: Mr. Examiner, this might be a convenient place to observe that this entire cross-examination by Mr. Giallorenzi, in it he has been indulging in what I thought was going to be done in a cursory fashion, but it seems to me he is going into it in great detail, has nothing to do with the issue that is now being tried in the case. Obviously we are not so crazy as to put in the flimsy kind of case we have put in if we are proving our damage case at this time. That is not what we intended to do.

I asked Mr. Adir certain questions to show their standing in the trade, their ability to operate at the present time.

Examiner Robinson: You can stop right there. That is what I think he is trying to show. One of these things is the ability to procure.

Mr. Kurrus: He is going way back. Of course we will tie this in when we prove our case.

Examiner Robinson: He can't rely on you, what  
985 you are going to do. As long as there is any connection at all with this matter, I don't see anything particularly wrong with his questioning.

Mr. Kurrus: He is wrong with his questioning on the point of whether they are a common carrier or not.

Examiner Robinson: You put in your evidence to show that Banana Distributors was capable and good in the trade.

Mr. Kurrus: At the present time.

Examiner Robinson: All right. He has to have a series of things.

Mr. Giallorenzi: That is why I objected this morning when Mr. Kurrus went so far afield.

\* \* \* \* \*

986 Q. Exhibit 35 shows the dates and days of the week on which Grancolombiana vessels arrived at Philadelphia. You look at the first, second, third and fourth pages. In fact, if you look at the whole exhibit you will note the vessels arrive different days, any day from Monday to Sunday during the various weeks. On some occasions they arrive the same day in subsequent weeks.

Do you consider a weekly service where the vessels arrive at different days of the week an adequate one? A. I have looked at this exhibit before. I think it was introduced earlier. I noted that in all of this year, 1958, with the exception of perhaps two boats, maybe three, all 987 your vessels come in Wednesday or later, and that would be just perfect.

Q. That would be just perfect. What about prior to this year?

Mr. Kurrus: I object to that. I don't see what prior to this year at this time has to do with the case we are now trying. If he wants to bring that out in the other part of the case, let's do it then.

Examiner Robinson: I will permit it for the year 1957.

The Witness: In '57 you maintained a pretty good schedule, also, but instead of coming in the weekend part of the week you came in the beginning part of the week. You were coming in Sunday, Monday, Tuesday and Wednesday.

By Mr. Giallorenzi:

Q. Do you consider those arrivals good ones? A. It doesn't matter if you have space on the ship. In the long run the market is a plus month, no matter when arriving, if you end up with a plus figure.

. . . . .

993 Q. Is it desirable to stay at a port up to 60 hours?

Mr. Kurrus: I object.

Examiner Robinson: I think that would depend on the lapsed time from the time of loading to discharge.

Mr. Kurrus: I have a substantive objection to the question. Mr. Giallorenzi has persisted in this line of questioning before and he is doing it again, and I object to it.

Apparently he is trying to prove that Grancolombiana Line's contracts are so onerous and that their service is so poor that nobody should ship on their ships. Whether that be a fact or not, it is rather unusual, it seems to me, that Mr. Giallorenzi should be trying to prove that. But



in any event we are not here asking to ship under a contract on the Grancolombiana Line. We are here asking that Grancolombiana Line be declared to be a common carrier.

Mr. Giallorenzi keeps alluding to this contract and that these conditions are in the contract, and now he is going to ask, I suppose, as his next question: Would  
 994 these terms be acceptable to you? So the conditions are in the contract, and so what? They mean nothing.

As I say again, we are asking that they be declared to be a contract carrier, a common carrier. We are not premising our claim on some contract that they drew up, and we didn't even know the terms of the contract until they were divulged in this case. Certainly Mr. Borrero knew, but nobody in Banana Distributors knew what the terms were. Whether Grancolombiana Line could put these conditions in some kind of a forward booking agreement, whether they would or not, is certainly something that they might prove later on; but there is no foundation for it at the present time.

I object to these questions premised on the Grancolombiana Line contract with Panama Ecuador Corporation as the basis for a series of inquiries as to whether or not we would be willing to ship under the same circumstances. It is a completely warped kind of inquiry, it seems to me.

Mr. Giallorenzi: What Mr. Kurrus forgets so conveniently, and I am a little amazed at it, that he spent all morning going over a wide range of items which encompassed the question of common carriage and reparations all in one. At two particular points I interposed objections and they were overruled.

Since that was the status of the record, I felt that this cross-examination was entirely relevant. I mean,  
 995 if he wanted to go into the question of common carriage alone, he should have limited his questions to



a few pertinent things and I'd have limited my cross-examination to that.

As the record now stands, I have heard a little bit of testimony on the ships themselves and the effect of intermingling cargo and the speed or lack of speed of the loading and unloading, which I think go to the question of common carriage alone. But that is a very insignificant part of the testimony of Mr. Adir this morning.

Examiner Robinson: Any comments, Mr. Blackwell?

Mr. Blackwell: No, sir.

Mr. Kurrus: I have a comment, Mr. Examiner. What Mr. Giallorenzi has just said is a meaningless type of argument. It isn't even responsive to the objection I raised, which is, what is the relevancy of this line of questioning.

He says I did something on direct. What did I do? I would just like to have him say what the relevancy of this is. I think that is a simple request.

Mr. Giallorenzi: You were trying to establish, first of all, that Grancolombiana is a common carrier and you have asked some questions from your witness. You also went ahead and attempted to qualify him as a shipper, and he went off on many other items involved there, too, and these very items that I am cross-examining him on.

996 Mr. Kurrus: I didn't ask him anything about your contract.

Examiner Robinson: I am inclined to agree with Mr. Kurrus.

Mr. Giallorenzi: He opened the door this morning on this.

Examiner Robinson: On the contracts?

Mr. Giallorenzi: On the whole related subject.

Examiner Robinson: That doesn't necessary mean that you can get everything in. There has to be some limit. I think fundamentally he has a good objection. As I say, I am going to allow all of you reasonable latitude because it is hard to desegregate—let's keep out the school prob-

lem—on this thing, but that's why I want to be pretty liberal. I think fundamentally he is right.

Mr. Giallorenzi: For example, he went into these conferences with reference to the Grace Line. I don't think that had anything to do with common carriage. It had more to do with reparations. But that testimony went in. He went into other items strictly reparations. I don't know why he went into them. He is now pressing the objections that I pressed this morning and I was overruled.

You have taken a leaf out of my book.

Mr. Kurrus: No, I am not pressing the same type of objection at all. The only theory of my presentation  
997 was to prove that Banana Distributors was a qualified shipper at the present time. Naturally it involved going back a few years to prove that. Some of those things do touch on reparations, I admit. In so far as the reparations features of them are concerned, Mr. Giallorenzi can cross-examine to his heart's content when we put in our case. But I didn't question him about the contracts. I didn't go back and question him about the availability of bananas in Ecuador in 1955 and 1956, all of this stuff that he has already put in.

This senseless remark that the door is open without—

Examiner Robinson: I don't think you need to go on. I sustain the objection.

We will take a short recess.

(Short recess.)

By Mr. Giallorenzi:

Q. Mr. Adir, are you familiar with the Grace Line vessels? A. I believe I am, sir.

Q. Have you ever been aboard any of them? A. Oh, yes, most of them.

Q. Would that be passengers and freighters? A. Yes. We've handled bananas on both boats since the early part of this year.

• • • • •

1016 By Mr. Giallorenzi:

• • • • •  
1017 Q. You testified that Panama Ecuador is in competition with you. Can you tell us to what extent? A. All bananas imported, no matter by whom, are in competition with the other bananas imported. It is a market commodity.

Q. But you can't pinpoint any certain percentage or anything like that? A. I told you that we do sell some customers together, but even the ones that we don't sell together, they are in competition. They may be in the same area or we may not be able to sell their accounts, they may not be able to sell ours. I don't just mean direct competition where we buy for the account or sell them jointly or along with United Fruit, but we may call on one account and have them for a customer and at a later date they may successfully sell them, or vice versa. That is the extent of competition. We compete with the United Fruit Company, also.

Q. Do you compete with Standard Fruit Company? A. Whoever brings in bananas competes. I don't suppose United would make that statement but any others  
1018 than United would.

Q. The price of bananas you obtain, are they similar to the prices Panama Ecuador obtains?

Mr. Kurrus: I object to this. I didn't go into prices of bananas on direct. We have dropped the reparations case for the moment, and unless Mr. Giallorenzi could show some relevancy to the common carrier question I think that question ought to be ruled out.

Mr. Giallorenzi: Do you concede that this point of competition has no relevancy to the question of common carriers?

• • • • •  
1019 Q. You heard Mr. Dixon testify, or rather, Mr. Myer, and I believe Mr. Consolo testify, that the

price of bananas generally at Philadelphia is the same that you can obtain in New York. Do you agree with that statement? A. You can sell bananas in Philadelphia and in New York for the same price, but we don't sell bananas most times for the price that—your question was, and I'd be glad to answer, do we get the same for our sales as Panama Ecuador does?

Q. Yes. A. I would say that we get more.

Q. You get more? A. So I would think or I am positive that if we sold bananas in Philadelphia we'd get the same price that we get in New York, not that they get in Philadelphia.

Q. And your price in New York is more than the  
1020 price in Philadelphia? A. I think on an average cargo we average more per pound than they do.

. . . . .  
1022 Q. In this market which you just testified to about the importation of bananas, could you tell us what the dominant force is, independents or Standard or United Fruit? A. United Fruit is always importing the largest quantity of bananas; in the present market since they are so very short it doesn't matter what the name of the company is. If you have bananas to sell, you sell them.

. . . . .  
1032 Mr. Kurrus: With reference to the petition of Panama Ecuador Shipping Corporation, we violently oppose it. We believe that they have no right to intervene at this stage of the proceeding, and that no court in the country would allow intervention under these circumstances.

First of all, I might say that there is no question that if Panama Ecuador had intervened or attempted to intervene at the proper time that their intervention might have been allowed. The lachrymal plea which is contained in this petition has got nothing to do with allowing

their intervention at this time, and I want to emphasize that it is the time of the intervention which is the critical issue here.

1033 The issues in this proceeding, the basic issue of common carriage, has been pending before the Board for over a year. Grancolombiana Lines' petition for declaratory order was filed in October of 1957, and Consolo's complaint was filed in November of 1957. Banana Distributors' complaint was filed in July of 1958. During this entire period the issues of whether or not Grancolombiana Line is a common carrier have been pending before this Board.

It is well known, of course, to the petitioner, Panama Ecuador Corporation. The Panama Ecuador Corporation, in fact, was originally a part of the proceeding where they were joined as a respondent, and they promptly got out. They say they got out because they didn't want the onus of being another person subject to the Act. What difference that would make to them, I don't know, but in any event if they didn't want to be another person subject to the Act and didn't want to be joined as a respondent, they certainly could have filed a simple petition for intervention at that time.

The issues with respect to whether or not Grancolombiana Line is or is not a common carrier have always remained the same. Nothing has changed at all during this entire period. The petition for intervention cites no changed circumstances which would forgive this petitioner from having filed a petition for intervention when it should have filed one, namely, at the outset of the proceeding rather than now.

1034 The only thing that has changed during this entire period is that last Friday a motion was made to sever the reparations part of this proceeding from the common carrier issue. At that time we recall Mr. Staff got up and made some hurried remarks on his own. It was

followed by a visit of his attorney to Washington, and today they file a petition for intervention.

1054

**Jack Friedlander**

was called as a witness, having been previously sworn, was examined and testified as follows:

**Direct Examination**

By Mr. Rosenzweig:

Q. Mr. Friedlander, what is your occupation? A. I am the General Manager of the Ecuadorian Fruit Import Company.

1099 Q. Now, before the objection you were stating for the record what a pontoon is. A. A pontoon is a barge which we use to store the loading equipment, the stages that are used for the stevedores to walk up to the side port from the banana barges, the horizontal pieces, all of the loading equipment involved in getting the fruit from the banana barges to the holds.

Examiner Robinson: It is sort of a buffer between the actual loaded barge and ship.

The Witness: That is correct, and it also carries all of this equipment.

1216 Mr. Giallorenzi: I would just like to make a preliminary statement. I will make it as brief as possible.

1219 So, in conclusion, we take this position here: that for the sake of this declaratory proceeding we do not say that the Grace Line decision is good, bad or indifferent. That will be up to the Circuit Court of Appeals to decide next month. But we accept it as the law of this

case until the CCA reverses them, if they see fit to reverse the Maritime Board. But we say we have presented some facts and we will present some more through our two witnesses this morning, and we say to you, accepting the Grace Lines decision as law, although it may be reversed, that in examining these facts which we will put in and some

of them have been put in through Mr. Rosenzweig—  
 1220 I was going to cover that with Mr. Friedlander until he intervened—are there sufficient facts brought before you to distinguish these cases from the Grace Line case which would say that the Grace Line case is good law but inapplicable because of the differences which we have set forth in this proceeding. That is all we are seeking to learn from the Board.

Again I repeat, assuming that the Grace Line decision is good, valid law, and we are not attacking that in any manner, shape or form—

Examiner Robinson: You think your facts differentiate your case from the necessary holdings in the Grace Line case?

Mr. Giallorenzi: That is right.

\* \* \* \* \*

**Jose J. Borrero**

was recalled, having previously been duly sworn, testified as follows:

**Direct Examination**

**By Mr. Giallorenzi:**

Q. Mr. Borrero, you have been previously sworn in and you have testified that you are or have been the Acting General Manager of Transportadora Grancolombiana, LTDA., the General Agent in the United States of  
 1221 Flota Mercante Grancolombiana and that you are now the Executive Vice President of Grancolombiana, N. Y., Inc., which is the general agent in the United

States and Canada for Flota Mercante; is that correct? A. Yes; that is correct.

. . . . .  
1230 The Witness: Off the record. Of course, there was also Mr. Consolo, in 1954, who was around the place.

Mr. Giallorenzi: I notice that they have smiled over there. I ask that they cut that out.

Examiner Robinson: I don't think that he is taking it personally.

Mr. Kharasch: I think Mr. Borrero was being cute when he said Mr. Consolo was around the place.

Examiner Robinson: If they embarrass you, let me know and I will kick them out.

The Witness: This is friendly.

Examiner Robinson: It is friendly until you have to pay money.

The Witness: That is off the record, of course. He was there, Consolo; he looked at the vessels, too, looked at the prices. He couldn't pay those prices. The vessels,  
1231 in his opinion, were not adequate.

Examiner Robinson: Let me ask you something: When you say he couldn't pay the prices, do you mean he didn't have the money?

The Witness: No, no, I mean—

Examiner Robinson: He didn't want it at that price.

The Witness: He didn't want to pay the price.

Mr. Rosenzweig: You were saying the vessels, in his opinion, were not adequate.

The Witness: I will come to that point. I have in the record here that he mentioned the height of the different decks, especially the height of the lower hold which, in his opinion, represented a loss of space. He said that he wasn't going to pay for space that he couldn't utilize. But the point that we tried to make clear to every shipper, Mr. Examiner, was the following: We are not selling you the



space for you to carry one stem or 15,000 stems of bananas; we are not selling you the height of the decks; we are selling you a chamber or a hold and the price is \$7,000. You could put it horizontally or vertically; it is up to you. That isn't the point, you see. You have a house with four rooms and that is the house. If you have the house and you are paying that rent, you can sleep five people or two people in the house, but this is the price of the house. That was 1232 the provision of the company. He offered—he indicated—I won't say "offer"—he indicated that he would be interested in the two upper chambers or in the three chambers provided 25 per cent of the price was cut down in the lower hold. Of course you have to realize in the hypothetical case the Grancolombiana would agree to rent the two upper chambers. That would represent for the company a loss of one-third, more than one-third of the rent that the company was interested in getting.

By Mr. Giallorenzi:

Q. Would the company have agreed to that? A. Would the company have agreed to rent that? No, because the lower holds are the greater volume than the other two because they were higher. Then I would say you would take a loss because of this: You couldn't utilize that hold for anything.

Mr. Blackwell: Would you repeat that?

The Witness: You couldn't utilize the lower hold because the end of the run was precisely Guayaquil. Then it is the custom or it was the custom at that time only to put cargo, southbound cargo in number three hold for Buenaventura only so that after the vessel sailed for Buenaventura they could start, the crew of the vessel could have started cleaning the hold and preparing the hold and bringing down the temperature so that at the arrival of 1233 the vessel at Guayaquil the hold was ready for bananas. Once the temperature was at an even point,

the loading of the bananas could take place simultaneously with the unloading of other cargo for Guayaquil.

By Mr. Giallorenzi:

Q. What holds were used for the other cargo? A. The other four holds of the vessel. When they were unloading the other holds, they could be loading the bananas in number three and load the other cargo and get out of there. Then you couldn't use that hold for any other thing because the only way to go to the lower hold was through the other decks that would have been occupied with bananas. Then you can see why the company couldn't follow this procedure.

Examiner Robinson: You might just as well lock the place up and throw the key away.

The Witness: Then, as I said before, this was the price and the conditions that the company offered. We couldn't guarantee arrivals or sailings.

Then in 1954, December, 1954, or the beginning of 1955 the company inaugurated a service for on the west coast of the United States and Canada to Guayaquil, and in view of that in that particular trade there were offers of refrigerated cargo, frozen cargo at this time—tuna fish, frozen fish—and in view of no success at all with 1234 this vessel here in the east coast service, the company placed two of their vessels, the Ciudad de Cali and Ciudad de Quito, to the west coast service.

Examiner Robinson: West coast of the United States?

The Witness: West coast of the United States, where they carried in the northbound trips full loads of tuna fish, frozen tuna fish. Then the service in the east coast only remained with three reefer vessels.

By Mr. Giallorenzi:

Q. You mean the service on this east coast? A. On the east coast.

Mr. Blackwell: That was when?

The Witness: That was from January, 1955, to sometime in September, 1955. In the spring of 1955, I think, Consolo was again inquiring about the space. At that time we didn't have five vessels; we had three, but the company was willing to bring back the other two vessels here if finally somebody would decide to sign the contract for a definite period of time and give the certain guarantees and accept the conditions of the service.

Mr. Consolo again stated the point of view about the differences in the height, and the company being in no position to change its standpoint, then he walked out.

Then out of this conversation with Mr. Perlstein 1235 that I mentioned before—one had to recognize it was a very strong fellow that wanted to carry bananas—came the Ecuadorian Fruit Company. Then Mr. Perlstein, I think I can safely say that he brought Mr. Morey and Mr. Staff to Grancolombiana and through his insistence Grancolombiana advanced conversations with Messrs. Morey and Staff for the possibly grant or hiring of refrigerated space of the five vessels.

Then in June—sometime in June—when the conversations had advanced with Mr. Morey and Mr. Staff, the company thought that it was necessary to advise the public, in the interest of those people who had either called us or had visited with us about the space, that we put an advertisement or a notice in the Journal of Commerce, which is usually in New York the recognized shipping newspaper data, that—

By Mr. Giallorenzi:

Q. I show you Exhibit 7.

Examiner Robinson: Let him complete his answer. You said you desired to put in an advertisement.

The Witness: Yes, that would read more or less—You want to give me that now?

By Mr. Giallorenzi:

Q. I show you Exhibit 7, Mr. Borrero, and ask you if those are the two advertisements you placed in the 1236 Journal of Commerce. A. Yes, these are. We are interested in receiving an offer for this space or invited an offer for this space just to see if there was anybody at this time again interested in doing business with us.

Q. Did you receive any response to those ads? A. No. Then the negative being no reply to this call, the Company decided to continue negotiations with Messrs. Morey and Staff, they being, in our opinion or in the opinion of the company at that moment, the only ones interested in this space and in the terms and conditions that the company was in position to offer. When Mr. Morey and Mr. Staff signed the contract—

Q. By that you refer to Exhibit 15, Mr. Borrero? A. (continuing)—on July 20, 1955, at 7:15, only three vessels were in service. Of course we offered the other vessels, which would come back as soon as possible, the two vessels on the west coast, as soon as possible to join these other three in order to be able to perform the contract as it was signed, and I believe it was sometime in September, 1955, when the five vessels were all ready on this side of the Atlantic.

\* \* \* \* \*

1243 Q. Now, Mr. Borrero, when the vessels do stop at Buenaventura, what is the principal cargo which you load? A. Coffee.

\* \* \* \* \*

1280 Mr. Kharasch: May I inquire whether early in 1957 you received a proposition or bid or letter from a Mr. Noboa or from Panama Ecuador or Morey and 1281 Staff, copies of which have not been introduced or copies of which have not been supplied to us?

Mr. Giallorenzi: I will answer that. When the contracts of Panama Ecuador came up for renewal, there was a bid

submitted to Bogota by Messrs. Morey and Staff for Panama Ecuador. At this particular point I was not going to go into that because I think that bears solely on reparations and the best witness to testify as to those letters and the actions which were taken upon those bids by the Board of Directors of Grancolombiana would be Dr. Diaz. For that reason I have not introduced those documents into evidence. But since you have requested them and I have tried faithfully to supply you with everything that you requested, and even more, I will make them available to you right here and now. I have them in my file.

. . . . .

1282 By Mr. Giallorenzi:

. . . . .

1283 Q. Mr. Borrero, after Flota received the various requests for allocation of space from these perspective shippers, did you make that fact known to Panama-Ecuador Company? A. Yes, we did.

Q. And to whom did you confer with in that connection? A. Well, only I and Dr. Diaz, and I don't recall the exact day or the moment, but it was made known to Mr. Staff and Mr. Friedlander and Mr. Morey.

Q. And what were you told by them? A. Well, I may say that they made it known to the company that  
1284 they consider that they have a valid contract with the company and that if we were going to open up this or take any unilateral action about the contract we can expect a suit, a demand.

Q. Now after you had that conference or conferences with Panama-Ecuador Company, what did Grancolombiana do? A. Grancolombiana did the only thing that in the opinion of the company was to be done and that was to come to the particular body which made the decision that put the company in this dilemma and present this case to that body, and in the development of that thinking of the company, we came to Washington. We came with you.

Q. Was that visit to Washington on October 1, 1958, with me and Dr. Diaz? A. That was the visit.

Q. October, 1957. I am sorry. A. Yes, it was October or September of 1957.

Q. 1957, October 1st. A. Yes, 1957, and we visited Mr. Tibbott and another gentleman whose name I don't remember. We had requested Mr. Tibbott for an audience so we could come and talk with him about certain matters that was worrying us. We were worried. Then we got to Washington with these two gentlemen and we hoped that they would give us a quick answer.

Q. Did you get the quick answer? A. We went to 1285 them and we gave to them the same story that we are giving here to the Examiner—of course without all this detail and time, these interrogatories and counter-interrogatories. We had this conference with these gentlemen and they couldn't do anything then, so the company then decided the next thing to do was to file the petition for a declaratory order and be ready to put before the Examiner all the circumstances surrounding the transportation of bananas in Grancolombiana, the characteristics of our service, the peculiarities of this service, to the best of our ability, which is what we are trying to do now, without any intention to antagonize or to carry favor with the authorities, but just to give the Board, in accordance with our opinion and in the way we see these things, all of the facts for this body to make a decision, a decision that could be carried out within our capacity to deliver because otherwise we may find it impossible or impractical to continue carrying bananas with the detriment of our company for the loss of revenue, the detriment of Ecuadorian economy because although the amount of bananas that Grancolombiana is carrying out of Ecuador is not great percentage-wise in relation to the total banana export, it represents a good amount and it would grow. Withdrawal of that service by Grancolombiana would be detrimental to the economy of Ecuador and withdrawal of the transporta-

tion in general will be detrimental to the inter-  
 1286 American trade that we as Americans—northern,  
 southern, central, as well—should devote our inter-  
 ests and our efforts and our energy to promote and to  
 develop.

Examiner Robinson: Off the record.

(Discussion off the record)

Mr. Giallorenzi: No further questions.

Examiner Robinson: Mr. Page.

Mr. Page: Oh, let Mr. Kharasch be first.

### Cross Examination

By Mr. Kharasch:

• • • • •  
 1295 Q. Exactly. It is not your decision to go to Puerto  
 Bolivar; it is for company convenience? A. No, but  
 it would be a decision to go to Guayaquil or not to go to  
 Guayaquil to load bananas.

Q. The first contract, and I believe the subsequent con-  
 tracts which you had with Messrs. Morey and Staff or their  
 companies provided that the shipper should pay Gran-  
 colombiana something extra if the ships went to Puerto  
 Bolivar? A. Yes.

Q. To your knowledge, was that extra collected  
 1296 from the shipper? A. Yes, unless nullified by any  
 letter of agreement, it was collected.

Mr. Giallorenzi: I don't know what the relevancy of this  
 line of questioning is, but I am trying to keep my objections  
 to a minimum so that we could expedite these protracted  
 hearings.

Examiner Robinson: Do you want to ask him about this?  
 I frankly don't know.

Mr. Giallorenzi: Mr. Kharasch, what is the purpose of  
 this line of questioning?

Mr. Kharasch: I propose to show that from the incep-  
 tion of the contracts with Messrs. Morey and Staff that

contrary to your statements, Mr. Giallorenzi, at the opening of your case, contrary to the position of intervenors, Panama-Ecuador, as expressed in their intervention petition, Grancolombiana has engaged in a regular practice of favoring these shippers; that contrary even to the terms of their own contract, that contrary to your statements at the opening of your case and some of the testimony of Mr. Borrero, that the contracts with the present shippers were modified in the shippers' favor and made in the shippers' favor, at times when the Maritime decision which you say you accepted had already been issued and at times when

1297 Mr. Consolo's offer was lying before you and you could have obtained more money for your space from Mr. Consolo.

Examiner Robinson: How can you prefer a shipper when you don't have but one?

Mr. Kharasch: Because their defense, Mr. Examiner, in part—Well, let me start over.

Examiner Robinson: I am just asking you for your contention.

Mr. Kharasch: The primary discrimination, of course, is keeping my client off the ship. There is no question about that. The defense of Grancolombiana, as just recited in Mr. Borrero's testimony, has been "well, we dealt fairly; we wanted to do the best thing; we tried to do the best thing for the company." I propose to show that they have taken action after action and time after time have preferred the present shippers when other shippers were ready and waiting to take the space. The issue introduced by Panama-Ecuador in its petition to intervene was, or an issue introduced in their petition to intervene was that even if Grancolombiana is a common carrier, the present shipper, Panama-Ecuador, is entitled to complete its contract and keep the space for another eighteen months or two years.

Examiner Robinson: But do we have to assume that they wouldn't treat other shippers the same way if they had more than one shipper? That is the point that concerns me.



Mr. Rosenzweig: Or if there was another single 1298 shipper.

Mr. Giallorenzi: The issue that Mr. Rosenzweig, if I can say that it is an issue, that he introduced has no bearing on my petition for a declaratory order and if he wants to introduce a thousand issues, let him do it in an appropriate proceeding. I think the only thing pending before the Board right now is the question of the applicability of the Grace Line case which I conceded is the controlling law, to make things simple, to these set of facts. Now whether we favor them or didn't favor it, I don't see any relevance of it and just because Mr. Rosenzweig may have introduced some testimony on that issue, I don't think it is of any moment in my case.

Mr. Rosenzweig: I don't know, everyone is attributing to me testimony or issues on the phase of the case which is alleged to have been opened by me.

Examiner Robinson: I don't even recall that.

Mr. Rosenzweig: I don't recall Mr. Friedlander testifying to anything other than the conditions of the vessel.

Mr. Kharasch: I will read your petition if you like.

Mr. Rosenzweig: Go ahead.

Mr. Kharasch: Mr. Examiner, in the first Consolo case, and we are trying now the issue of common carriage 1299 that was tried in the first Consolo case, the Board report said that Mr. Consolo was entitled to 40,000 cubic feet of space and should be preferred to the present shippers. Our complaint here asks for the allocation of space to us. In the Banana Distributors' case, your one issue was, and it is an issue here, whether the existing shippers should be allowed to participate in this space.

Examiner Robinson: I didn't say they should be preferred to the present shippers; I said it shouldn't be followed.

Mr. Kharasch: I say you passed on that issue.

Mr. Rosenzweig: I would think that would be an appropriate issue after Mr. Robinson has rendered his decision.

Mr. Kharasch: No, it was tried at the same time.

Mr. Giallorenzi: Are you assuming that if the decision here should be that we must throw open the space that we are not going to give any consideration to your client and your purpose now is to build up your client?

Mr. Kharasch: Where is this petition to intervene?

Examiner Robinson: I, frankly, don't see any relevance in this, Mr. Kharasch. I am going to give you opportunity to express anything further you have, but at the moment I don't see it.

Mr. Kharasch: Are you asking me to desist in this line of questioning as to concessions made to this present 1300 shipper?

Examiner Robinson: I have not been convinced, let's put it that way, as to the relevancy of it.

Mr. Kharasch: I say it is relevant as to discrimination in favor of the present shipper and that the testimony is relevant to rebut the testimony that Grancolombiana refused the other shippers because they had a good contract with Panama-Ecuador.

Examiner Robinson: Well, until you can show that they would treat your client or somebody else in a different fashion, assuming they were in here on equal terms with the present shipper, I don't see the connection.

Mr. Kharasch: You say unless I can show that they wouldn't treat them as equals?

Examiner Robinson: Yes. In other words, where you have one shipper, I don't see what difference it makes for the basic issue which we are proceeding on now how they treated them. Now if you say, well, we know they wouldn't have treated our client the same way or something, that is something else. Even then I don't know whether you would be able to put it in, but you don't even have that.

Mr. Kharasch: Well, let me address my question to Mr. Borrero.

By Mr. Kharasch:

Q. Referring to Mr. Consolo's offer dated March 6, 1301 1957, please look at page 2 of Exhibit 25, Mr. Borrero. A. Yes.

Q. Why was that offer of Mr. Consolo's rejected by Grancolombiana?

Mr. Giallorenzi: I object to the question on the ground that it is outside the scope of the issues of the petition for declaratory order.

Mr. Kharasch: We are not trying your case.

Mr. Giallorenzi: Now you wait a minute. You are trying my case. You are not trying one case one day and the other case the next day. I object on the further ground that that offer was made to the head office of Grancolombiana in Bogota and if and when you get to the point of reparations, Dr. Diaz will be here to answer the questions.

Mr. Kharasch: It has much more to do than with the case on reparations. We are trying here the common carrier issue tendered by the complainants in Dockets 827 and 841, and the common carrier issue tendered by your petition in Docket 835.

Examiner Robinson: Did you say Exhibit 24 or 25?

Mr. Kharasch: Exhibit 25, Mr. Examiner.

Mr. Rosenzweig: I am at a slight loss here.

Examiner Robinson: If you think you are at a slight loss, I am away ahead of you.

Mr. Rosenzweig: You at least can find them. I 1302 don't even have them.

Mr. Kharasch: Exhibit 25 is Mr. Consolo's offer to Grancolombiana in March, 1957, saying "I want space; here is what I will pay for it." Nothing could bear more directly on the discrimination than whether it was justified or not and nothing could bear more directly on the issue of common carriage than why they refused it.

Mr. Rosenzweig: Mr. Examiner, may I be heard?

Examiner Robinson: Are you finished?

Mr. Kharasch: Yes.

Mr. Rosenzweig: In this offer Mr. Kharasch is making a comparison of dollars purportedly offered by Mr. Consolo with a number of dollars which are stated in the contract between Panama-Ecuador and Flota Grancolombiana. The contract between Flota Grancolombiana and Panama provided that the vessels would call to discharge at the port of Philadelphia. The contract—the proposal which was made by Mr. Consolo said, after stating prices, which are a few hundred dollars higher, and I guess deliberately designed to create an issue of discrimination—

Mr. Lippman: Mr. Examiner, I think this has gone far enough. Mr. Rosenzweig was not present during the early days of this hearing when we went into this matter ad infinitum and you ruled, I believe, that the document which covered the contractual provisions with respect to 1303 the North Atlantic ports of unloading for the Grancolombiana vessels would speak for themselves. You ruled on any arguments concerning these provisions.

Mr. Rosenzweig: I will quote these provisions. I will read from the document.

Mr. Lippman: That has been quoted. You are coming a little bit too late.

Mr. Rosenzweig: If I may finish, Mr. Examiner,—“We understand from your New York office that these ships load at Guayaquil, Ecuador and come to North Atlantic ports at the discretion of the shipper.”

Now I say that merely because they speak of a dollar rate for the cubic capacity of these vessels does not mean that you can ignore all of the other elements which have to enter into a contract between the carrier and the shipper and, very simply, if the discretion of the shipper were to carry these bananas not to the port of Philadelphia but to Portsmouth, Maine, then I submit that you cannot make any comparison between the rates or if it is the shipper's discretion to order the vessel to Jacksonville, Florida, first and then to come empty the rest of the way to the port of

Philadelphia, the mere fact that he states some rates in his proposal does not make those rates at all comparable to rates between fixed ports.

Examiner Robinson: Now let's get back to the 1304 question. Just in your own words paraphrase what you asked the witness because it will take you ten minutes to find it in the notes.

Mr. Kharasch: I asked him why they rejected this offer. It is as simple as that.

Mr. Giallorenzi: Do you want to answer it?

The Witness: Why shouldn't I answer it? There is nothing to hide.

Mr. Giallorenzi: If you think you can answer it, go ahead.

The Witness: Well, I can answer it. I was not in the meeting of the Board of Directors where this offer was presented, but if I had been there—

Examiner Robinson: Now, now, that is enough. You are well off. Just stop.

Mr. Giallorenzi: That is enough.

Mr. Rosenzweig: Has Minute No. 480 been introduced in evidence?

Mr. Kharasch: Yes.

Mr. Rosenzweig: Then I respectfully submit that Minute No. 480—

Examiner Robinson: We don't have to go any further. He says he doesn't know.

Mr. Roseizweig: It sets forth the position of the Board on the proposal.

1305 Examiner Robinson: We don't have to worry about that. He says he doesn't know, so you just drop it.

By Mr. Kharasch:

Q. Did you receive, Mr. Borrero, in the ordinary course of business a letter of June 21, 1957, to Consolo from your company's head office in Bogota, which is page four of Exhibit 25? A. Yes, I received it.

Q. Did you also receive, Mr. Borrero, a copy of a letter of March 25, 1957, which is marked as page 3 of Exhibit 25, being an earlier letter from Dr. Diaz to Mr. Consolo? A. Yes, we did.

Q. Were you informed of the action of your Board of March 10, Minute No. 480?

Mr. Giallorenzi: I don't see how this is relevant to this petition for a declaratory order.

Mr. Kharasch: We are not trying your petition for a declaratory order alone; we are trying that and my case.

Examiner Robinson: I am afraid this is so intermeshed you just can't separate them.

Mr. Giallorenzi: Would you show the witness the exhibit?

Mr. Kharasch: I think he has it. You have my copy, I believe.

Mr. Giallorenzi: What exhibit is that?

1306 Mr. Kharasch: That is Exhibit 18. I misstated the date. It is Exhibit 18. We have Minute No. 480 and Minute No. 482 of the Board of Directors.

The Witness: What is your question?

By Mr. Kharasch:

Q. Were you informed of that action of your Board of Directors? A. Well, the Board of Directors is not supposed to inform me as an employee of Transportada Gran-colombiana of what happened in the meeting. I knew that a contract had been extended, that the extension had been granted.

Q. Is it not true that the Board of Directors of your Company had decided to continue the contract of Messrs. Morey and Staff on the date of March 25, 1957, when they wrote to Mr. Consolo and said, "Your kind communication is being considered"?

Mr. Giallorenzi: I don't see how this is relevant.

The Witness: No.

Examiner Robinson: I think he said in the first hearing,

didn't he—I mean in New York—that he knew that before he saw the copy of the letter of what had been done?

Mr. Kharasch: Now I am asking if Grancolombiana didn't write to Mr. Consolo and say "Your offer is being considered" at the time when Grancolombiana had  
1307 already decided to continue the contract with Messrs. Morey and Staff.

Mr. Giallorenzi: If you know.

The Witness: No, I don't know.

\* \* \* \* \*

1315 By Mr. Kharasch:

Q. Did you, prior to July 11, 1958, communicate with either Mr. Consolo or—I will do some of Mr. Kurrus' work and ask you if you communicated with Banana Distributors and offered to them any of the space on your ship or even all of the space on your ship in the terms which are provided in the July 11 letter. A. Mr. Karasch—

Q. Now, let's answer either yes or no.

Examiner Robinson: Answer yes or no.

The Witness: No.

Examiner Robinson: While there is a lull, let's have a little recess and get the temperatures down.

(A short recess was taken.)

By Mr. Kharasch:

Q. Mr. Borrero, did you talk to Mr. Consolo in January or February, 1957? That would be prior to the time the Morey and Staff contract was coming up for renewal. A. Over the phone. He called me.

Q. Yes? A. I say yes; yes.

Q. And did you discuss with him at that time the fact that the contract was coming up for renewal and furnish him with some information by letter about the refrigerated space? A. He asked me for the purpose of bidding  
1316 to give him the capacity of the refrigerated vessels in the service at that time because he wanted to bid

for the vessels on the expiration of the contract, when the option for renewal was up about July 20, 1957.

Q. And did you receive a copy of the letter which Mr. Consolo submitted to your Bogota office on March 5? A. Receive from whom?

Q. I don't think you received one from Mr. Consolo, but did you receive it from your Bogota office? A. Yes, I did.

Q. And following March 6, did Mr. Consolo speak to you by telephone from time to time? A. From time to time, yes, he called me.

Q. And did he inquire as to what was happening on his bid? A. No, I don't think that he called me to inquire about what happened to the bid he sent to Bogota. He was supposed to receive information from Bogota.

Q. When he called you, did he ask if you knew anything about what was happening to his bid? A. Well, if he called me, I may say that I didn't know, if I didn't know.

Q. And did you ever tell him by telephone what happened to his bid? A. I don't recall that I did.

. . . . .

1319 Q. Did Panama-Ecuador tell you if you didn't give them that concession they would get off the ship?

Mr. Giallorenzi: The witness has already testified as to the reason why the concession was made.

Mr. Kharasch: No, he has not.

Examiner Robinson: This could be an additional factor that hasn't been discussed. I don't know that it is, but I mean it could be.

The Witness: You see, although I was a partner in the discussions, I cannot say whether they say that in those words or not, you see—those particular words that you have put in there—or whether they make any implication that I couldn't go forward with this the way it was.

Examiner Robinson: In other words, they implied that they might discontinue if they didn't have it?

The Witness: That they can't go forward.

. . . . .



1320 By Mr. Kharasch:

Q. In the discussions leading up to the July 11 modification of the Panama-Ecuador contract, did Panama-Ecuador say or imply or did you understand that if they didn't get this modification they were going to get off the ship, break their contract and get off? A. I would say they implied that, yes.

\* \* \* \* \*

1321 Q. Have you been aware of the decision of the Maritime Board in Docket 771 and 775 since it was made public on April 30, 1957? A. Yes.

Q. Were you aware of that decision when on May 22, 1957, you executed a three year extension of Panama-Ecuador's contract? A. Of the April 30 decision, yes. I mean I personally. I don't know about the others.

\* \* \* \* \*

1335 Q. And you also said that Panama-Ecuador people said they would sue you. A. Yes.

Q. If you broke their contract. A. Yes.

Q. What are the dates of those conversations? A. No.

Q. Any idea at all? A. No.

Q. I will ask you to look once more at Exhibit 88. It is a letter from your Bogota office to Mr. Turino. A. Yes.

Q. We have several letters which are almost identical. Is that a form letter which the Company decided to send out to shippers? A. Yes.

Q. What is the meaning of paragraph "G" on page 2 asking shippers for "generally, any other information required which you deem necessary"? A. It is a letter addressed by Flota Mercante Grancolombiana, Bogota, and sent by my office and I can't say at the moment whether it was sent.

Mr. Giallorenzi: I prepared that letter. You can  
1336 interrogate me on that. I will gladly take the witness stand.

Examiner Robinson: I don't think he is going to ask you.

By Mr. Kharasch:

Q. How soon after this letter was written in July, 1957, would your company be willing to give anybody any space on the ships? A. I don't know.

Q. No matter what they responded to such a letter? A. I can't answer that. I don't know.

Q. This letter of July 8 asking Turino Co. for some information, and you say ". . . we will be happy to advise you upon termination of the present contract so that you may favor us with your bid . . ."— A. If that is what the letter says, then that is the situation of the contract.

Q. Which is 1960, in July; is that right?

Mr. Rosenzweig: If not sooner cancelled.

The Witness: The answer is that if that is what the letter says, that is when the contract is cancelled.

Mr. Giallorenzi: I wish you would interrogate me on that letter. I prepared that letter and I will gladly take the stand.

Mr. Kharasch: I don't think you have to take the 1337 stand. Will you confirm for the record that Grancolombiana intended by that, in accordance with the terms of that letter, that Grancolombiana was not interested and would not give the space to anyone until 1960?

Mr. Giallorenzi: I will not, no.

\* \* \* \* \*

1346 Mr. Giallorenzi: I told you Dr. Diaz was going to be here because these minutes go to the phase of reparations.

Examiner Robinson: Let's stop now and if there is anything to be taken up on that, wait until the eminent Dr. Diaz gets here.

Mr. Kharasch: Is he going to be here?

Mr. Giallorenzi: He is going to be here on the question of reparations.

Examiner Robinson: He said he was going to be here from the beginning.

Mr. Giallorenzi: These Board of Directors minutes go to the question of reparations.

Mr. Kurrus: He is not going to be here on the issue of common carrier?

1347 Mr. Giallorenzi: No, he is not. There is no need for him to be here on that.

• • • • •

1350 **Jack Friedlander**

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

#### Cross Examination

• • • • •

1358 By Mr. Kharasch:

Q. Now, what about Panama Ecuador Shipping Corporation which holds the space on Grancolombiana? Where is that corporation organized and what is its function?

A. The Panama Ecuador Shipping Corporation is organized in Panama. The function of this company is to transport fruit from Ecuador to the United States, and at times we have engaged in other businesses. That is, the Panama Ecuador Shipping Corporation has engaged in other businesses besides bananas and shipping—

1359 Q. To be sure I have the chain right, the fruit is brought in Ecuador by this company whose first name is Exportadora? A. That's correct.

Q. It's then sold to Panama Ecuador which brings it up here? A. No, it's sold to Ecuadorian Fruit Import Corporation.

Q. And Ecuadorian Fruit Import Corporation uses Panama Ecuador Shipping Corporation to do the shipping? Is that right? A. That's correct.

Q. So Panama Ecuador Shipping Corporation does not touch the fruit at either end? A. Panama Ecuador Shipping Corporation is solely responsible for the transportation of the fruit.

Q. The present contract with Grancolombiana is held by Panama Ecuador Shipping Corporation? Is that right?  
A. That is correct.

Q. And this contract was assigned to them by Messrs. Morey and Staff? A. Was assigned to them by Exportadora de Productos Ecuatorianos.

1362 Q. Is the Ecuadorian Fruit Import Corporation the corporation which sells bananas to buyers in the United States? A. Yes, it is.

1364 Q. Regardless of the particular dates, in October 1957, in addition to all the space available on the Grancolombiana Line, Messrs. Morey and Staff or

1365 Panama Ecuador obtained space on the Grace Line for about 3,000 stems a week? Is that right? A. That is correct.

1441 Q. Does your total loading operation take between 13½ to 15 hours? A. That's correct.

1812 **Jack Friedlander**

resumed the stand and testified further as follows:

**Recross-Examination (Resumed)**

1613 By Mr. Dougherty:

Q. As we ended yesterday, I think you had testified, Mr. Friedlander, that you distribute your ripers solely in the Philadelphia area. A. Ripes and some turns. As we have discussed the problems, the ripe fruit or the turning fruit falls into many different categories of yellow.

1614 And there is some turning fruit that can ride, that is loaded for out of town. There is some turning fruit that can't ride; it is loaded for Philadelphia. And of

course the ripe fruit as classified on our out-turn reports is for Philadelphia.

Q. Now, did you tell us to whom you generally disposed of that ripe and local turn fruit? A. You want the names?

Q. No, not the names. Well, in these terms, do you have regular customers to whom you usually sell? A. Fairly consistently, regular customers I would say, sold to the same people 99 per cent of the time.

Q. I see. Now with respect to the fruit that you distribute beyond Philadelphia, do you also distribute that fruit to regular customers? A. More or less regular customers. We sometimes exchange customers during periods of changing markets with the East competing against New Orleans market or not competing against the New Orleans market, or competing against the Tampa market or not competing against the Tampa market; but generally more or less to a pretty fixed group of customers.

Q. That is you generally maintain a fairly consistent clientele? A. That is correct.

Q. Now, do these customers customarily buy 1615 bananas from other distributors? A. I would say the great majority of them buy from other importers.

Q. Do you make it a practice to sell bananas to customers who buy from importers, from independent importers, such as Banana Distributors? A. In our programming of sales, we try to avoid as much as possible the wholesaler or jobber who buys from small independents such as ourselves.

Q. Why? Why is that, sir? A. Generally I would rather compete against United or Standard than Banana Distributors, Andes, or Dixon, or any of the other small independents that fall into our category.

Q. For what reasons would you prefer not to compete with other distributors? A. Well, generally on a weakening market where the demand falls off as compared with the available supply, a small independent has a tendency to lower his price at a rate, or more accelerated rate and deeper than either United or Standard.

I can generally get a better price from customers who buy exclusively from Standard and/or United than customers—and ourselves, than customers who buy from Banana Distributors and ourselves, or Andes and ourselves, Dixon and ourselves.

Q. How do your customers divide as between those who buy from United and Standard and you and those  
1616 who buy from other independents and you? A. I would say on a weighted basis, this is just a rough estimate—I would have to look at some figures before I gave you an exact answer—I would say that somewhere around 70 or 75 per cent of our customers buy from Standard and/or United and ourselves, and not from the other small independents.

Q. Now as to those customers who do buy from other small independents, do they also buy from Standard and United? A. Yes, in all cases.

Q. Then from what direction, from what sources in your judgment does the principal competitive force come in the market in which you sell these? A. Primarily United, and secondarily Standard.

• • • • •

1752

**Jose J. Borrero**

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

### Cross-Examination

• • • • •

1778 By Mr. Kurrus:

• • • • •

Q. This paper, “memorandum” it is called, starts off by saying, and I am quoting from the comments made by Mr. Friedlander: “We cannot continue shipping fruit from Ecuador to the United States because, for reasons which have not been established as yet but which may be the results of excessive dampness originated from severe

winter or parasites, said fruits arrive with spots which appear to grow from inside towards the 1779 outside during the days taken by the voyage and which makes the fruit unsalable."

Did Panama-Ecuador request to stop shipping bananas altogether? A. Yes.

Q. They did? A. Yes. They sent a letter saying they won't be able to ship bananas.

Q. At all? A. Yes.

Mr. Rosenzweig: Let's fix the date of that letter.

The Witness: I mean that is the letter, it is here in the evidence.

Mr. Dougherty: I don't believe it is in the document.

The Witness: Not in that paper, but before—

Mr. Rosenzweig: You don't know whether that letter was dated before or after Mr. Zevallos' report?

The Witness: No, I would have to see the letter.

By Mr. Kurrus:

Q. Do you have the letter which states Panama-Ecuador wanted to stop shipping bananas altogether?

Mr. Dougherty: Just one moment.

May I ask the witness if this is the letter?

(Document handed to witness)

The Witness: Yes, this is one I was referring to, yes.

1780 Mr. Dougherty: The letter the witness is referring to is a letter dated May 6, 1958, from Mr. Friedlander to Flota, which I believe is in evidence as a part of Exhibit 19.

Mr. Rosenzweig: Was there a series of letters?

Mr. Dougherty: Yes, there was a series of letters.

. . . . .  
1801 Q. Did you consider the steps you might take if the Federal Maritime Board were to decide that you had to open your space to several shippers? A. Well, this

is trying to read the mind of the Federal Maritime Board. We presented our problem to the Federal Maritime Board.

Q. But did you consider the possibility that the Board might declare you to be a common carrier?

Examiner Robinson: In other words, did you discuss with anybody what might be your course in case the Board decided that you had to let everybody ship?

The Witness: Yes, we have been thinking about it.

By Mr. Kurrus:

Q. Did you have any studies made with respect to what action you might take if you had to open your vessels to several shippers? A. Not particularly.

Q. But you did have discussions on the problem? A. Well, I suppose in a way. We have been thinking if the Maritime Board said we are supposed to open the space, then we will have to face how we can open the space, you see.

Q. And how will you open the space if the Board should declare you to be a common carrier? A. We don't know. So far as making it individually with 1802 different people, that is no problem. It is a matter of loading. The problem is loading and unloading the vessels.

Q. Do you have any idea of how you will make the space available? A. No. For us still that is a big problem. How can you handle the vessel with the same speed, the same speed for the loading and unloading of the vessel, because we haven't done it. We don't have any experience on that.

Q. And you have never investigated the situation on the Grace Line to see whether you might learn something from that? A. Well, we know that the Grace Line vessels are a little different to our vessels.

Q. But you haven't attempted to talk the situation over with anybody in Grace Line? Let me ask you, have you talked to anybody else in the Grace Line with respect to this problem other than Mr. Magner? A. With respect to what particular problem now?



Q. The problem of taking on several shippers. A. No.

Q. Have you talked the problem over with Panama-Ecuador Corporation? A. Well, I will say we have talked to Panama, yes.

Q. Do you have any correspondence with them? A. No.

Q. Did you consult Panama-Ecuador Corporation 1803 prior to filing your petition for a declaratory order?

A. About what?

Q. Did you consult with that? A. About what line? In what respect?

Q. To ask their opinion with respect to the filing of this declaratory order. A. You refer to where you come to or where to file the declaratory order?

Q. No. At the time you filed your petition for a declaratory order, or the time you were considering filing it, did you discuss the matter with Panama-Ecuador Corporation? A. No, I don't remember that we discussed with them or consulted with them whether we should present or not a petition for declaratory order.

Q. Did you tell them you were going to file such a petition? A. They received a copy of the petition.

Q. But prior to the time of receiving a copy, did you consult them? A. I don't recall, no.

Q. You don't recall? A. No.

Q. Do you have any objection to opening the space to Banana Distributors and Mr. Consolo, provided that your loading time is not substantially increased? 1804 A. We have no objection to opening the space to anybody if—I mean if loading can be accomplished and the unloading accomplished.

Q. If the Board should declare you to be a common carrier and should require you to accept the bananas of more than one shipper, would you intend to stop the carriage of bananas? A. If the transportation of bananas isn't practical, we have to stop it.

Q. But in any event you would try it, would you not? You would give it a try, wouldn't you? A. That is a very

difficult question. We expect what the Board decides is the right thing to do. If they are going to decide with full knowledge of what they are deciding, we are law abiding people.

Q. In other words, if they should decide that you have to accept the bananas of more than one shipper, you will accept the bananas of more than one shipper. Is that true? A. I am not going to say here that I am going to go against the order of the Board.

Q. You could stop the carriage of bananas? A. If it isn't practical, yes. If we can't carry them the way it is supposed to be carried, we have to stop.

Q. The only thing I am asking you is you would give it a try if that is the order of the Board. Isn't that true? A. I would say so.

Q. Do you have any letters from Panama-Ecuador Corporation stating that they would insist on their contract being carried out and would sue you if it were broken? A. No.

Q. Did they ever state that? A. Yes, they did.

Q. Who stated that? A. Mr. Staff.

Q. Mr. Staff? A. Yes.

Q. When did he state that? A. Well, I don't have a recollection of the particular date, but it is something he stated, and you can ask him whether he stated it or not.

Q. Was it approximately after you filed your petition for a declaratory order? A. Before.

Q. He didn't state that in May of 1958, did he? A. No.

Q. Do you know how long it ordinarily takes for Panama-Ecuador Corporation to complete its loadings of bananas? A. I think that the contract requires 16 hours.

Q. Do you know whether they normally complete the loading in less time? A. Within the time prescribed in the agreement.

Q. Do you know whether you have ever charged them a penalty for taking over 16 hours? A. No, I don't recollect.

Q. Do you have any special knowledge of banana loadings and banana unloadings? A. No. I haven't been in Guayaquil when they load bananas.

Q. You have never seen them load them? A. No.

Q. Do you know whether it would take more than 16 hours if three shippers were to use the Grancolombiana Line ships? A. I don't know.

Q. Has Grancolombiana Line ever conducted a study to determine whether it would take more than 16 hours if three shippers would use the vessels, three banana shippers? A. I don't know any study being conducted on that.

Q. Then I suppose it is true that you do not necessarily prefer to do business with one shipper rather than three banana shippers, provided that the loading time would not be substantially increased? A. It is a very difficult question because it is better to deal with one than with three in any facet of negotiations. It is less problems.

Q. I recognize that there may be certain advantages 1807 to dealing with one rather than three, but if you can accommodate three shippers and satisfactorily meet your schedule requirements and obtain as much or more revenue, I take it that Grancolombiana Line does not insist on dealing with one shipper rather than three shippers? A. If we are going to make more money, the more money will pay for the problem, I suppose.

Q. If you can make more money, you would rather deal with three? A. If it can be carried out in the way you put it, within the limit that we have assigned in this schedule for that operation, I would say yes.

Q. If you could make more money, you would rather deal with three? A. If I can do it, yes.

Q. Now, in the contract that you have with Mr. Staff and Mr. Morey, Exhibit 15, I refer you to page 13, paragraph 14, of that contract, which is a provision providing in effect that if the contract should be unimpossible for any reason that you can terminate it. Was that provision insisted upon by Grancolombiana? A. That is a provision that is being used in banana contracts for a long time prior

to this contract, that provision put by us in here, by Grancolombiana.

1808 Q. That was put in by you? A. Yes.

Q. On the advice of your attorney? A. I think

so.

By Mr. Kurrus:

1809 Q. Prior to the filing of the petition for a declaratory order in October 1957, do you recall whether Grancolombiana Line had considered filing such a petition prior to that time? A. The petition was filed, as I think I explained here, when we started receiving requests for space based on the Federal Maritime Board order sometime in August 1957. We came to Washington in September, I think, to the Federal Maritime Board, to see Mr. Tibbett, with the purpose in mind of explaining to the Maritime Board that we have a contract for the carriage of bananas, on one hand, and on the other the request from shippers for space, basing their request on the order issued by the Federal Maritime Board. We hoped that we were going to get a quick answer or ruling on the matter. We were told no, they couldn't rule on that thing across the board. Then we decided to present the petition for a declaratory order. That is the story of the declaratory order.

Q. But you came down to see Mr. Tibbett sometime in September, as you recall? A. It was sometime the beginning of October or the end of September. I don't recall the date. The date is some place written.

Examiner Robinson: Nevertheless, it was shortly before you filed your petition?

1810 The Witness: It was before, yes.

Mr. Dougherty: I can supply the exact date.

The Witness: October 1, 1957.

By Mr. Kurrus:

Q. Did you have any correspondence with Mr. Tibbett?  
A. No.

Q. Do you recall what Mr. Tibbett told you? A. He listened to our problem, but he didn't make any recommendation.

Q. Now, with respect to these letters for space which prompted you to file your petition for a declaratory order, do you know any of the people from whom you received such requests for space to be responsible and experienced banana importers? A. We did not investigate as to the financial qualifications of anybody at that time.

Q. And you didn't know whether any of them were actually bona fide importers? A. We didn't make any investigation.

Q. Now, when people wrote to you for space is it true that the procedure was for you to first of all acknowledge their letter and then for you to write them a form letter that had been prepared by your attorney, asking them to answer certain questions? A. That letter was sent 1811 by Flota Mercante Grancolombiana, asking for information about the people who wrote letters.

Q. I see. The procedure was for you to send the letter and say you were forwarding it down to Bogota, and Bogota sent the form letter back that had been prepared by Mr. Giallorenzi. Is that true? A. I think so, yes.

Q. Now, I show you a letter dated September 9, 1957, to Banana Distributors, which is that form letter that Mr. Giallorenzi penned and was sent out from Bogota whenever anybody wrote in. Would it have made any difference with respect to the demand for space if anybody had answered specifically each one of those questions involved? A. Let me say this to you, Mr. Kurrus. It is very plain, very simple to see our procedure here. We came to the Federal Maritime Board for a ruling in our situation. We felt even that this ruling was going to be a month or two

months after we presented the problem. Now, we don't know what the Maritime Board are going to rule.

Q. You didn't know. I see. A. You received a request from somebody. You tell this somebody, "We presented a petition, gentlemen. At this very moment we have a petition for a ruling at the Federal Maritime Board. Once we hear about this ruling we will get in touch with you." The other thing is we gather here the information

about the people that are interested in this space, so 1812 if the Maritime Board rules that we have to open up the space and the space can be opened, then we have the information on hand to deal with these people.

Examiner Robinson: You were just looking to the future in case you had to do it?

The Witness: Yes, and be prepared for anything, you see. We also thought that when we came to the Maritime Board, we explained to the Maritime Board our obligations as far as the contract and what our capabilities in so far as being able to carry bananas.

By Mr. Kurrus:

Q. Nobody would have gotten on the ships no matter how they answered these questions? A. Until the Maritime Board—Until we hear from the Maritime Board we are not going to do anything.

Q. Now, on October 7, 1957, Mr. Policarpo—Do you know him? A. No.

Q. Mr. Policarpo? A. Oh, Policarpo.

Q. Sure you know him. Mr. Policarpo wrote to—Is that his first name or last name? A. The first name. His last name is Gutierrez.

Q. He wrote to Banana Distributors, acknowledging their letter of September 16, and advising, and he states 1813 he advises that the available reefer space on our vessels has been committed for the next two years. Is that true, the next two years? Was your space committed up to October 7, 1959, at that time? A. No. The

contract that Grancolombiana holds with Ecuadorian Fruit Company goes to 1960, sometime in July, unless sooner terminated.

Q. So you don't know what he was referring to when he said that it had been committed for the next two years?

A. He was not quite precise on the date, yes.

Q. And then he goes on to say: "Of course, we shall be pleased"—that means happy—"at the end of said term to consider your application for allotment of space on our vessels."

Now, if you know, I would like you to tell me whether that means that they were considering that they would allocate the space between shippers at that time.

Mr. Dougherty: If you know.

Mr. Kurrus: If you know. If you don't know, don't answer.

Mr. Dougherty: If you don't know, say so.

The Witness: I don't know the meaning of the letter.

1816 Q. Do you operate a service similar to Grace Line's? A. Similar in what respect?

Q. Similar with respect to the carriage of northbound commodities. Would you say that your service is similar to Grace Line's service from the west coast of South America, other than the fact that they go down to Chile?

A. They have also passenger service, you see.

Q. But would you say that their freight service is similar to your service, that you operate in a similar way?

Examiner Robinson: Just in general.

1817 A. Yes, I think so, yes.

By Mr. Rosenzweig:

1823 Q. Isn't it a fact that Mr. Noboa loads your vessels which are in the Gulf service? A. I understand he is loading the Gulf vessels.

Q. He is loading the Grossman vessels? A. Yes.

Q. Those are your vessels in the Gulf? A. Yes.

Q. And you are aware of the fact, are you not, that Mr.

1824 Noboa also submitted a proposal requesting space on the Flota vessels in or about March of 1957?

A. I know that, yes.

. . . . .

1826 Q. So that the transit time from Guayaquil to Philadelphia is still 12 days for the most part? A.

Eleven days.

Q. Which is it, 11 or 12 days? A. Eleven days, I think.

. . . . .

1856 By Mr. Kurrus:

Q. When you went to the Federal Maritime Board in September of 1957, who instructed you to go there? A. The General Manager of Flota, Diaz, came to the Maritime Board. I accompanied him.

Q. Dr. Diaz went there? A. Himself, yes.

Q. Do you always sail your vessels at the maximum speed? A. The instruction of the vessel is to proceed to the next port of call at a maximum speed consistent with the safety of the vessel and the cargo. This is a general instruction.

Q. It is true, is it not, that the main obstacle to your opening up the space to several shippers has been the outstanding contract with Panama-Ecuador? A. No, I wouldn't say so. I think that I tried to put here the position of the company in as few words as possible, plainly, you see. We came to the Board to tell the Board,

1857 "Gentlemen, we have here a contract that we entered into in good faith with these people, and we have here a request from people asking for the space. If we don't give these people the space, they are going to sue for reparations. If we cancel this contract, these people are telling they will sue us if we cancel the con-



tract." Now we come here to the Board to tell the Board our problem and offer the Board all our technical information or information of our vessels for the Board to study, and in their good judgment and their wise thinking decide what to do. The problem, if you allow me, Mr. Kurrus, is very simple. The problem is not the past. The past is behind us. What happened is behind us. The problem is the future, what we are going to do tomorrow, day after tomorrow. Then the important thing is for the Board to listen and see what the vessel can do, and then we have to do what the Board decides or not go any longer in the business. If it is established and determined that we can carry one thousand different shippers, these vessels can carry one thousand different shippers, and there is one thousand different shippers and we are supposed to give the space to one thousand different shippers, we will give the space to one thousand different shippers. If you allow me, I see in this two parallels. There is certain evidence or testification here that says you must not put in those vessels more than one shipper. You will delay the loading up to 30, 40, 50 hours. On the other hand, there is

other information, another concept or opinion that 1858 says you will not take more than 30 minutes. Then

in my humble opinion what I would do is trust this man who is telling the truth because of his experience or trust this other gentleman here who has no Grancolombiana vessel but he is a wizard in the banana business and knows about the business, what to do—30 minutes, 30 hours. You have the vessels to load. The vessels are there. See how they can be loaded. The vessels come here. See how they can be unloaded. Go there and decide. We don't want to block any intention of the Board. We want to abide by the Board decision.

Examiner Robinson: I think it is perfectly clear what Mr. Borrero's position is. I don't think we need to go into it. I think he has explained it thoroughly.

Mr. Kurrus: That wasn't the question I asked, but I thought it was a good answer.

Examiner Robinson: I do, too. It is a full answer.

• • • • •

1891 Mr. Dougherty: Grancolombiana also does not want to substitute oral argument for briefs. These cases are all of the utmost importance to Grancolombiana. We feel entitled to the opportunity to examine the transcript when it is available, to analyze it, to analyze the evidence, and to make a reasonable statement of our position. I don't think that is possible in an oral argument off the cuff, an extemporaneous kind of presentation. The net result in terms of clarifying the issues, it seems to me to be only confusion. It is just as important to Grancolombiana that it be given the opportunity to make a statement of its position as it is to the other parties to have a more expedited handling of the case. Grancolombiana wants the case to proceed on briefs and in the usual fashion for which the rules provide. We are, of course, willing to cooperate within that limitation to suit the convenience of all parties. In addition, the procedure suggested I am sure would be most inconvenient for Grancolombiana's counsel.

Examiner Robinson: I consider this a big case, and  
1892 I think the Board might very well criticize me for not getting a record and also for not waiting until this transcript is finished. This isn't something that you can just kick around, and of course I don't mean that as any reflection on you people at all. Where you have so much at stake and you haven't even gotten all the transcript, I would not be justified in having an oral argument like that. I would like to expedite it as much as I can, and I assure you once the record is in I will start right to work on it, because I have no other case ahead of it.

• • • • •

**Exhibit 1****FLOTA MERCANTE GRANCOLOMBIANA, S.A.**

Statement as to When Each of Our Vessels Entered the  
Banana Trade Between Ecuador and United States  
North Atlantic Ports

CIUDAD DE QUITO .....	December 26, 1949
CIUDAD DE MEDELLIN .....	July 5, 1951
CIUDAD DE MANIZALES .....	April 3, 1953
CIUDAD DE CALI .....	August 26, 1953
CIUDAD DE IBAGUE .....	November 29, 1953
CIUDAD DE TUNJA .....	July 29, 1957
MANUEL MEJIA .....	February 3, 1958
CARTAGENA DE INDIAS .....	May 17, 1958
CIUDAD DE PASTO .....	July 5, 1958
CIUDAD DE BARRANQUILLA .....	July 21, 1958

Source: Supplied by Grancolombiana

**Exhibit 2****ENCLOSURE NUMBER ONE**

Vessel	Cubic Feet Capacity	Cubic Feet Per Stem	Capacity—Stems
CIUDAD DE QUITO	U.T.D. 15510	5 cub. ft. per stem	3,102
	L.T.D. 11420	5 cub. ft. per stem	2,284
	L.H. 16190	5 cub. ft. per stem	3,238
	Total 43120		8,624
CIUDAD DE MANIZALES	L.T.D. 11420	5 cub. ft. per stem	2,284
	L.H. 16190	5 cub. ft. per stem	3,238
	Total 27610		5,522
CIUDAD DE CALI & CIUDAD DE IBAGUE	U.T.D. 19565	4.7 cub. ft. per stem	4,162
	L.T.D. 17660	4.7 cub. ft. per stem	3,757
	L.D. 24890	4.7 cub. ft. per stem	5,297
	Total 62115		13,216
CIUDAD DE MEDELLIN	U.T.D. 18560	4.7 cub. ft. per stem	3,949
	L.T.D. 13580	4.7 cub. ft. per stem	2,872
	L.H. 23880	4.7 cub. ft. per stem	5,082
	Total 56020		11,903
CIUDAD DE TUNJA & MANUEL MEJIA CARTAGENA DE INDIAS CIUDAD DE BARRANQUILLA CIUDAD DE PASTO	U.T.D. 15990	4.4 cub. ft. per stem	3,629
	L.T.D. 20650	4.4 cub. ft. per stem	4,693
	L.H. 18360	4.4 cub. ft. per stem	4,173
	Total 55000		12,495
CIUDAD DE CUENCA & CIUDAD DE POPAYAN CIUDAD DE NEIVA CIUDAD DE SANTA MARTA	U.T.D. 21200	5 cub. ft. per stem	4,240
	Total 21200		4,240

Source: Supplied by Grancolombiana

**Exhibit 6****ASSOCIATION OF WEST COAST STEAMSHIP  
COMPANIES AGREEMENT**

THIS AGREEMENT made in Cristobal, Canal Zone, by and between the parties signatory hereto on the 25th day of July in the year One Thousand Nine Hundred and Thirty-four.

**WITNESSETH :**

That the parties hereby associate themselves together in a Conference to be known as the Association of West

Coast Steamship Companies to promote northbound commerce from Pacific ports of Colombia or Ecuador to (a) Cristobal or Balboa, (b) United States ports on the Atlantic Coast, Pacific Coast (including Alaska) or Gulf of Mexico, or in the West Indies, Hawaii, Philippine Islands, or other island territories or possessions of the United States, by direct vessel or with transshipment at Cristobal or Balboa and/or at any other intermediate port, (c) any port of destination on the North American Continent or elsewhere not hereinbefore referred to except ports of destination under the jurisdiction of the European/South Pacific and Magellan Conference, which latter conference has jurisdiction over traffic destined to United Kingdom or Continental European ports, or transhipped at said ports for ports of destination in Asia, Africa, Australasia and to Peruvian and Chilean ports, also ports on the East Coast of South America via Straits of Magellan, and (d) between ports in Colombia and/or Ecuador for the common good of shippers and carriers by providing for just and equitable cooperation between Steamship Lines engaging in the transportation of such commerce, and to the accomplishment of this end the parties hereto severally agree with each other as follows:

1. A conference is hereby established to be known as the Association of West Coast Steamship Companies and the common carriers by water signatory to this agreement hereby become members of said conference. This conference shall, to the extent and in the manner hereinafter provided, have jurisdiction over and deal with the transportation of northbound cargo from Pacific ports of Colombia or Ecuador re destinations as defined above.

\* \* \* \* \*

Journal of Commerce - 6/24/55

## tures

disability  
at school  
in/agent  
and

Israel  
8 Lines)  
Ambiana).

1. Hawai-

un.  
savia.  
Belgium.

arrange.  
Jocasta.  
and.

10). Eng-

1). Sea-

Mediter-

Mediter-

1. White).

with and

Houston.

Mediter-

and

Lines).

Belgium.

ON 21. UNDER THE FOLLOWING SIGNS AND  
for Vermilion River.  
CHESAPEAKE BAY—Tangier Sound—  
Big Annapessex River—Buoys changed.—  
1. Big Annapessex River Channel Buoys 1  
and 3 have each been changed to a second-  
class special can painted black equipped  
with a white reflector.  
Approx position. Buoy 1: 38 03 09 N.  
75 33 19 W.  
2. Big Annapessex River Channel Buoys  
3 and 4 have each been changed to a  
second-class special nun painted red  
equipped with a red reflector.

**ROBIN LINE**

American Flag Sailings  
to

South & East Africa

We are interested in receiving offers for the  
carriage of bananas from Ecuador to New  
York in the refrigerated space of our vessel.

**FLOTA MERCANTE GRANCOLOMBIANA, S. A.**

Agent: Transportadora Grancolombiana, Ltda.  
52 Wall St., New York, New York WH 3-7202

**REVERE WARE**

Journal of Commerce - 6/27/55

EXTENDING  
1. Lowe, 673

ANSWER-  
1. answering  
Y. 4th st.

1. wearing  
13 W. 42nd

1. skating  
at 1 Jack-

1. purchase-  
JACK WALK.

1. printing  
Girard st.

1. real estate;  
100 apt.

1. INC. cap.  
A. 4th st.

1. soda, habers-  
terland ave.

1. undertaking;  
Non Walk.

1. CAR. INC.  
44 W. 31st

1. dry goods;  
1. 100 apt.

1. real estate;  
1. 100 apt.

1. P. automo-  
1. 100 apt.

1. CORP. con-  
1. 100 apt.

**WM. SPENCER & SON  
CORPORATION**

Phone: BOWling Green 9-4410  
19 RECTOR ST., N. Y. 6, N. Y.

• Freight Handlers  
• Export Packers  
• Cargo Repairs  
• Rebagging

Strapping  
Marking

Foreign Freight Traffic  
233 Broadway, N. Y. • CO 7-0546

—other offices in  
principal cities.

**Canadian Pacific**

We invite your offers for the carriage of  
bananas in our refrigerated vessels from  
Guayaquil to New York subject to our  
terms and conditions. All offers to be  
submitted on or before June 30, 1955.

**FLOTA MERCANTE GRANCOLOMBIANA, S. A.**

Agent: Transportadora Grancolombiana, Ltda.  
52 Wall St., New York, New York WH 3-7202

Source: Supplied by Grancolombiana

AD RUNNING EVERY OTHER WEEK IN THE SHIPPING DIGEST AND THE FORWARDER

# SHIP VIA Grancolombiana

COLOMBIA, ECUADOR, PERU,  
MEXICO, CUBA AND  
CENTRAL AMERICAN PORTS

## 8 SEPARATE AND DIRECT SERVICES

WEEKLY FROM  
NEW YORK • PHILADELPHIA  
BALTIMORE

To Barranquilla, Cartagena,  
Pto. Limon, Pto. Barrios

SEATTLE BOLTER	WARDEN	May 12
Baltimore May 8	Baltimore May 13	
Philadelphia May 6	Philadelphia May 15	
New York May 9	New York May 16	

(Also calls Santa Marta)

To Buenaventura, Guayaquil,  
Callao, Mollendo/Matarami

CD. DE TURIA	New York May 9
CD. DE WENDELIN	CD. DE TRAGUE
Baltimore May 8	Philadelphia May 15
Baltimore May 9	Baltimore May 16
New York May 16	New York May 13

(Also call Ponce de Leon, Chimbote, Salaverry, Pisco, Lima)

Also calls to Santa Marta direct or  
transshipment as cargo offers.

To Santos—San Carlos Service

\*Refrigerated cargo space available.

Agents  
PHILADELPHIA BALTIMORE  
New York Co. Penn-Maryland Steamship Co.  
JUL 5-5885 LEXINGTON 4-7794

### GULF SERVICE TO

Pto. Barrios, Pto. Limon,  
Cartagena, Barranquilla

TAULUST BOLTER	GEORG RUSSE	May 14
Baltimore May 7	Baltimore May 16	
Cartagena May 9	Cartagena May 16	
New Orleans May 15	New Orleans May 20	

(Also calls Santa Marta)

To Buenaventura, Guayaquil, Callao

CD. DE KEIVA	New Orleans May 9
CD. DE POPAYAN	CD. DE MANIZALES
Cartagena May 14	Cartagena May 23
Baltimore May 15	Baltimore May 26
New Orleans May 20	New Orleans May 30

Also call Ponce de Leon, Chimbote, Salaverry, Pisco, Lima.

Maria and Tampa cargo direct or  
transshipment as cargo offers.

\*Refrigerated cargo space available.

### NEW ORLEANS AND HOUSTON

Texas Transport & Terminal Co., Inc.

### CANADA AND U. S. PORTS

To Colombia, Ecuador, Peru

JEFFREY	May 24	PL. ALFRED	May 28
Baltimore May 24	Baltimore May 28	Baltimore May 31	
Three Rivers May 26	Three Rivers May 29	Three Rivers May 31	
Quebec May 27	Quebec May 30	Quebec May 31	

(Also call Cartagena, Barranquilla, Buenaventura,  
Guayaquil, Callao, Mollendo/Matarami.)

(Plus other Panamanian ports as cargo offers.)

To Havana, Veracruz, Tampico

DALBEK	A VESSEL
Baltimore May 9	Baltimore May 27
Three Rivers May 10	Three Rivers May 28
Quebec May 12	Quebec May 29
PL. ALFRED May 15	PL. ALFRED May 30
Boston May 16	Boston June 3

Agents  
MONTREAL AND TORONTO BOSTON

The Robert Bedford Co., Ltd. Boston Shipping Corp.  
(North 2-4085)

### PACIFIC COAST SERVICE

To Buenaventura, Guayaquil,

Callao, Mollendo/Matarami

RIO MAGDALENA	CD. DE BOGOTA
Seattle May 5	Portland May 14
Vancouver May 9	Seattle May 16
San Francisco May 13	Vancouver May 23
Los Angeles May 15	San Francisco May 27
	Los Angeles May 30

Calli, Tacoma and Santa as cargo offers.

\*Refrigerated cargo space available.

To Acapulco, San Jose de Guatemala,  
La Libertad, Puntarenas, Cartagena,  
Barranquilla

ELLERBEK	TARDENBEK
San Francisco May 6	Portland May 10
San Francisco May 9	Seattle May 12
	Vancouver May 15
	San Francisco May 20
	Los Angeles May 24

Cells of Mollendo, Callao, Corinto, San Jose del  
Sur as cargo offers.

Agents

LOS ANGELES

Bedford, Guller & Co.  
Telephone 9022

SAN FRANCISCO

Bedford, Guller & Co.  
GARFIELD 1-6648

FLETA MERCANTIL

# Grancolombiana

General Agents  
TRANSPORTADORA  
GRANCOLOMBIANA  
LTDA.



NEW YORK CHICAGO DETROIT  
79 Pine Street 300 So. La Salle St. 1300 Bank Bldg.  
WHOLESALE 3-7309 6-2400 6-2530 WHOLESALE 1-3300

\*\*\*\*\*

Source: Supplied by Grancolombiana as typical advertising





# PERU

***now to be served***

**WEEKLY by GRANCOLOMBIANA**  
from Philadelphia, Baltimore and New York

## NEW YORK-EAST COAST &amp; WEST COAST COLOMBIA-ECUADOR-PERU

**SOUTHBOUND**

	CUBAB DE TUNJA	CUBAB DE MEDELLIN	MANUEL MEJIA	CUBAB DE QUITO	CUBAB DE CALI	CUBAB DE TUNJA	CUBAB DE MEDELLIN	CUBAB DE IBAGUE	MANUEL MEJIA	CUBAB DE QUITO	CUBAB DE CALI	CUBAB DE TUNJA	CUBAB DE GANA DE INDIAS	CUBAB DE IBAGUE	MANUEL MEJIA	CUBAB DE PASTO
	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL	ARR. SAIL
NEW YORK	Jan. 3	Jan. 10	Jan. 17	Jan. 24	Feb. 7	Feb. 14	Feb. 21	Feb. 28	Mar. 7	Mar. 14	Mar. 21	Mar. 28	Apr. 4	Apr. 11	Apr. 18	Apr. 25
CARTAGENA	Jan. 8	Jan. 16	Jan. 23	Jan. 29	Feb. 6	Feb. 13	Feb. 20	Feb. 27	Mar. 6	Mar. 13	Mar. 20	Mar. 27	Apr. 3	Apr. 10	Apr. 17	Apr. 24
BUNIAVENTURA	Jan. 11	Jan. 19	Jan. 26	Feb. 2	Feb. 9	Feb. 16	Feb. 23	Feb. 30	Mar. 7	Mar. 14	Mar. 21	Mar. 28	Apr. 4	Apr. 11	Apr. 18	Apr. 25
MANA	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
QUAYACUIL	Jan. 15	Jan. 23	Jan. 30	Feb. 6	Feb. 13	Feb. 20	Feb. 27	Mar. 6	Mar. 13	Mar. 20	Mar. 27	Apr. 3	Apr. 10	Apr. 17	Apr. 24	Apr. 31
CALLAO	Jan. 21	Jan. 27	Jan. 3	Jan. 10	Jan. 17	Jan. 24	Jan. 31	Feb. 7	Feb. 14	Feb. 21	Feb. 28	Mar. 6	Mar. 13	Mar. 20	Mar. 27	Apr. 3
ILCO	Jan. 23	Jan. 31	Feb. 7	Feb. 14	Feb. 21	Feb. 28	Mar. 6	Mar. 13	Mar. 20	Mar. 27	Apr. 3	Apr. 10	Apr. 17	Apr. 24	Apr. 31	May 7
BALTIMORE	Jan. 24	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Note: Sailings from Philadelphia and Baltimore are listed under New-York.

**Note:** Sailings from Philadelphia\* and Baltimore are listed under NORTHBOWN.

• As Cargo Officers

† Vessels Will Call at Peruvian Intermediate Ports en Camino Al Mar.

**NORTHBOUND**

[illegible]

• **As Cargo Offers**

**V Vessels Will Call at Peruvian Intermediate Ports on Certain Offshore**

(Subject to Change Without Notice)

**TUMACO**

**The Port of Tumaco  
will be served with a  
special service to and  
from all U. S. and  
Canadian Atlantic  
ports every 25 days.**

ship via

# AGENTS

**NEW ORLEANS and HOUSTON:**  
Texas Transport & Terminal Co., Inc.

**PHILADELPHIA:** Lavino Shipping Co.

**LOS ANGELES:** Balfour, Guthrie & Co., Ltd.

**SAN FRANCISCO:** Balfour, Guthrie & Co., Ltd.

**MONTREAL:** Robert Reford Co., Ltd.

**BOSTON:** Boston Shipping Corp.

**BALTIMORE:** Penn-Maryland S.S. Corp.



**General Agents**  
**Transportadora Cruzcolombiana, Ltda.**

**New York**  
79 Pine Street  
WHITEHALL 3-7200

**Detroit**  
1355 Book Building  
Woodward 1-3799

See ship card #78 for Gracelombiana's other services.

**Exhibit 15**

AGREEMENT entered into this 20th day of July, 1955, by and between FLOTA MERCANTE GRANCOLOMBIANA S.A., a Colombian corporation with its principal place of business in the City of Bogota, Republic of Colombia, S. A. (hereinafter called "GRANCOLOMBIANA"), acting herein through its duly authorized Agent, the North American Division of TRANSPORTADORA GRANCOLOMBIANA, LTDA., a Colombian limited liability company authorized to do business in the State of New York, U.S.A., having its office at 52 Wall Street, New York, New York, and Mr. Leonard Morey, of 383 Lafayette Street, New York, New York and Samuel G. Staff, of 415 Fifth Avenue, New York, New York, (hereinafter jointly called "lessee").

**WITNESSETH**

1. GRANCOLOMBIANA agrees to lease to lessee the refrigerated space existing at the present in the hold #3 of its vessels known as "CIUDAD DE MANIZALES", registered in Colombia, S.A., "CIUDAD DE QUITO", registered in Ecuador, S.A., "CIUDAD DE MEDELLIN", "CIUDAD DE CALI" and "CIUDAD DE IBAGUE" registered in Colombia, S.A., for the transportation of bananas from Guayaquil or Puerto Bolivar or Esmeraldas, Ecuador, S.A., to Philadelphia, Pennsylvania, U.S.A., on all northbound trips made by such vessels from said Ecuadorian ports, via Buenaventura, Colombia, to New York, New York, U.S.A., and lessee hereby hires all such refrigerated space under the terms and conditions hereinafter stipulated.

• • • • •

3. The schedule of sailings of the aforesaid vessels or any of them shall, at all times, be subject to the complete disposition and control of GRANCOLOMBIANA as to all circumstances connected with said sailings, including but without any limitation, the time, date and hour, and place of departure, the various ports of call, and the time, date

and hours, and place of arrival, as well as replacement, cancellation and/or substitution of vessels; however, GRANCOLOMBIANA agrees to expedite the sailing of the subject vessels from Guayaquil, Puerto Bolivar or Esmeraldas upon completion of the loading of bananas and to run them in their northbound voyages, from Guayaquil, Puerto Bolivar or Esmeraldas to Philadelphia, reserving only its right to call at any intermediate South American ports for a total period of time not exceeding thirty-six (36) hours. It is estimated that within normal conditions these vessels will make this run, between Guayaquil, Puerto Bolivar or Esmeraldas and Philadelphia in a maximum of 12 days, it being understood that GRANCOLOMBIANA will use its best efforts to have one of the vessels herein referred to in this Contract, arrive in Philadelphia every calendar week; should any vessel herein named make this run, within normal conditions, in more than twelve (12) days, counting said period from the date and hour of its departure from its port of loading bananas under this agreement, then GRANCOLOMBIANA shall pay lessee for each hour or fraction thereof beyond said period of twelve days at the rate of U.S.\$100.00 per hour or fraction thereof.

• • • • •

5. Lessee agrees to pay GRANCOLOMBIANA, for the use of the refrigerated space of the vessels subject of this contract, free in and out to said vessels, as follows:

• • • • •

(f) All the above established hire rates include the use of vessel's gear and power, but are exclusive of any and all expenses in connection with loading and unloading operations which shall be, in their entirety, for the account and risk of lessee. These expenses shall include, but not be limited to, receiving, loading, stowage, checking in, un-stowage, unloading, checking out, delivery, lights for overnight work, cleaning of wharves where the bananas have been handled, cartage of bananas rejects and debris, and

rental of mechanized shore equipment used in either loading or unloading operations.

6. As stated in Clause #5, loading and unloading operations shall be for the exclusive account and risk of lessee. Lessee shall load and stow the bananas placing in ship's reefer hold the number of stems which he considers proper.

7. GRANCOLOMBIANA shall give lessee or his agent at his home office address in Guayaquil, at least forty-eight (48) hours in advance, final notice in writing of the expected day and hour in which to begin the loading of bananas. It is understood that at such hour the ship's hold should be ready for the receiving of bananas as stated in Clause #11, otherwise, the time allowed to lessee for loading shall be counted starting only from the moment that the hold is ready.

8. As stated in Clause #5, unloading operations shall be for the exclusive account and risk of lessee, said unloading operations to be performed at GRANCOLOMBIANA's piers in Philadelphia if delivery of cargo is to be to Philadelphia and subject to the conditions hereinafter stipulated.

Unloading operations shall be performed under lessee's exclusive directions and supervision, and GRANCOLOMBIANA will not intervene or take any part in the performance of such unloading operations either in the hiring of labor or the corresponding payment of wages and the like.

11. GRANCOLOMBIANA agrees that not less than twenty-four (24) hours before readiness to load, the temperatures in the compartments to receive the bananas will be reduced to about 54 degrees Fahrenheit and maintained at that temperature until the holds are opened. During loading the temperature of the delivery air, as far as possible, will be maintained at 51 degrees Fahrenheit.

Temperature instructions may be changed as circumstances require by written request of lessee.

Upon completion of loading and closing of the compartments, the temperature of the delivery air will be reduced as quickly as possible, but not more than approximately one degree per hour, to about 54 degrees Fahrenheit. During the remainder of the voyage, so far as possible, the temperature of the delivery air shall be maintained at about 51 degrees Fahrenheit, and the return air about 56 degrees Fahrenheit, or at such other temperatures as lessee may direct in writing from time to time.

GRANCOLOMBIANA agrees to install in all vessels, as soon as possible, to the extent required in each of them, recording thermometers and temperature control instruments in at least five (5) recording points in each refrigerated hold. Upon completion of each voyage and arrival of vessel at the port of unloading, GRANCOLOMBIANA shall furnish lessee with a chart showing the recorded temperatures covering the period from twenty-four (24) hours before loading to the arrival of the vessel at the port of discharge.

Nevertheless, it is expressly understood and agreed that, unless shown to have been caused by negligence of GRANCOLOMBIANA as to which GRANCOLOMBIANA is not by law entitled to exemption, GRANCOLOMBIANA shall not be held responsible for the quantity, quality or condition of the bananas carried nor for any loss or damage occasioned by inherent defect or vice in the bananas shipped, by temperature, refrigeration, defects or insufficiency in or accident to or explosion, breakage, derangement or failure of any refrigeration plants or parts thereof or any material. This contract, and all bills of lading issued pursuant to it, shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an in-

crease of any of its responsibilities or liabilities under said Act. If any terms of bills of lading to be issued should be repugnant to said Act to any extent, such terms shall be void to that extent, but no further.

. . . . .

14. *If any provision or term hereof be invalid or unenforceable for any reason, GRANCOLOMBIANA shall have the right to terminate this contract by giving seven (7) days' written notice of termination to lessee, but in such event lessee shall not be responsible to GRANCOLOMBIANA except for any hire or other expenses which it may have incurred to the date of termination. Should GRANCOLOMBIANA thereafter determine to carry bananas under freighting agreements similar to this, except for the invalid or unenforceable provision or term, then lessee shall have an option to enter into a new agreement with GRANCOLOMBIANA similar in all respects and terms as herein set forth except for the invalid or unenforceable provision or term; and GRANCOLOMBIANA shall advise lessee of its intention to carry bananas again under freighting agreements and within fifteen days thereafter lessee shall advise GRANCOLOMBIANA whether it intends to exercise the option herein given to it to enter into a new freighting agreement. The term of said new freighting agreement shall be the period constituting the unfulfilled portion of the term of this agreement.*

15. In addition to and without limiting any other rights or immunities provided for herein, no liability shall attach to GRANCOLOMBIANA if any of the terms of this agreement cannot be performed due to Act of God, War, Government, Fire, Strikes, Congestion of Ports, Explosion, or Civil Commotion, and any other cause beyond the control of GRANCOLOMBIANA affecting its performance hereunder. Likewise, no liability shall attach to lessee if any of the terms of this agreement cannot be performed by lessee due to Act of God, War, Government, Strikes, and Civil Commotions, affecting his performance hereunder.

16. This contract shall not be assigned to others by lessee, in whole or in part, nor shall it be assignable by the operation of any judicial procedure without the previous written consent of GRANCOLOMBIANA which consent shall not be unreasonably withheld.

However, GRANCOLOMBIANA agrees to grant lessee the privilege to assign this contract to a new corporation which he is now causing to be organized under the laws of the Republic of Ecuador, S. A. within 75 days from the date of execution of this agreement, subject to approval of GRANCOLOMBIANA, which shall be reasonably given, of the financial standing of said new corporation and the commercial references of its stockholders; and provided that the assignment of this contract by lessee to said new Ecuadorian corporation shall include an assignment of the two (2) letters of credit herein referred to in Clauses No. 17 and 24 of this agreement to said new corporation, to be released as hereinafter provided.

Said Ecuadorian corporation shall, at the time of execution of such assignment, execute an agreement with GRANCOLOMBIANA assuming all obligations, covenants, liabilities, etc., of lessee hereunder, which assumption shall include and be accompanied by letters of credit opened and maintained, by said Ecuadorian corporation as specified in Clauses No. 17 and 24 of this agreement, in substitution for the letters of credit then outstanding, provided that GRANCOLOMBIANA shall simultaneously with the opening of the letters of credit by said Ecuadorian corporation, release the letters of credit caused to be opened by Leonard Morey and Samuel G. Staff under Clauses No. 17 and 24 of this agreement, and thereafter said Ecuadorian corporation shall be the lessee hereunder and Leonard Morey and Samuel G. Staff shall have no further obligations hereunder.

17. To secure the prompt and complete performance by lessee of all the covenants and conditions contained in this



agreement and the payment of damages, costs, expenses and freight and hire which by virtue of the foregoing contract might become due to GRANCOLOMBIANA, from lessee, the lessee agrees that on the date of the execution of this agreement he will cause to be opened an irrevocable letter of credit with a New York bank and confirmed by and payable by a New York bank in favor of GRANCOLOMBIANA, in the amount of \$45,000.00 U.S. Currency. It is agreed that the said letter of credit shall always be maintained until August 15, 1957 in the sum of \$45,000.00 U.S. Currency regardless of payments made against it and that said letter of credit shall not be cancelled so long as any claim of GRANCOLOMBIANA against the lessee arising out of this agreement is not settled or discharged in full. The lessee agrees that within ten (10) days after any withdrawal from the said letter of credit below \$45,000.00 he shall cause the same to be increased so that it shall always be maintained in the sum of \$45,000.00 except for the ten (10) day period necessary to bring it to that amount; and should lessee fail so to maintain the said letter of credit in the sum of \$45,000.00, then the failure shall be deemed a breach of the within contract. Said letter of credit shall state that GRANCOLOMBIANA or its agent, TRANSPORTADORA GRANCOLOMBIANA LTDA., shall be able to draw on the New York bank upon presentation of

(a) Invoice of TRANSPORTADORA GRANCOLOMBIANA, LTDA. for charges hereunder in quadruplicate; and sworn statement of TRANSPORTADORA GRANCOLOMBIANA, LTDA. that lessee is obligated to its principal in the amount stated in the invoice above referred to with respect to the item or items specified in said invoice; or

(b) Invoice of TRANSPORTADORA GRANCOLOMBIANA, LTDA. in quadruplicate and original bills of lading.

18. This contract shall commence on July 20, 1955 and remain in full force and effect until July 19, 1957. In the event that lessee shall fail to make any of the payments



called for under this contract when the same shall become due and payable or shall breach any of the terms hereof in addition to and not in substitution for any of its other rights hereunder, GRANCOLOMBIANA may, by seven days' written notice to lessee, terminate this contract in its entirety and in such event shall have recourse to damages as hereinafter set forth in Clause 24.

19. At the expiration of this contract, lessee shall have the option to renew this contract for *three* (3) additional years on terms and conditions, including hire, which, in the aggregate, shall be no less favorable to GRANCOLOMBIANA than those contained in any bona fide written offer made to GRANCOLOMBIANA by any other prospective lessee for such years. GRANCOLOMBIANA, not more than 120 nor less than 90 days prior to the expiration of this contract, shall advise lessee, in writing by registered mail, of the terms of such other offer. In the absence of such advice, lessee's option shall be to renew on the same terms and conditions as herein contained. Within thirty (30) days of receipt of such advice or at least sixty (60) days before the expiration of this contract if no such advice is received by lessee, lessee will advise, in writing by registered mail, GRANCOLOMBIANA as to whether the option is exercised.

20. Lessee will have the option to hire additional refrigerated space in any additional vessel or vessels, other than the vessels expressly mentioned in this contract, that GRANCOLOMBIANA may operate for its own account from Ecuadorian ports to New York, New York, provided lessee meets the terms and conditions (including hire) that GRANCOLOMBIANA will offer to lessee, for each particular vessel. GRANCOLOMBIANA, shall advise lessee in writing by registered mail, of the terms of such offer for each vessel. If within the ten (10) days following the submission by GRANCOLOMBIANA of such offer to lessee, lessee has not accepted the terms and conditions submitted to him by GRANCOLOMBIANA, GRANCOLOMBIANA shall be free to lease, such additional space to others, for any purpose, including the

transportation of bananas. Should GRANCOLOMBIANA from time to time, desire to substitute a vessel in place of any one of the five (5) vessels named herein, GRANCOLOMBIANA shall have the right to do so provided that lessee shall obtain approximately the same space on such substituted vessel as lessee had on the vessel to be removed from the northbound run and provided, further, that the rate for hire for such space on such substituted vessel shall be reasonably in proportion to the rate of hire paid by lessee for the space on the vessel to be removed from the northbound run, taking into consideration the characteristics of the substituted vessel.

21. Notwithstanding the provisions set forth herein relative to lessee's shipments to Philadelphia, Pa., it is further understood and agreed that lessee shall have the option to carry on unloading operations in accordance with the terms of this contract at any of the following ports: Jacksonville, Florida, Charleston, South Carolina, Savannah, Georgia, Norfolk, Virginia or Baltimore, Maryland, provided lessee notifies GRANCOLOMBIANA as to the name of the port where the cargo will be unloaded upon completion of the loading operations.

In the event that after the vessel has sailed from the loading port, lessee desires to unload at any of above mentioned ports and so notifies GRANCOLOMBIANA, GRANCOLOMBIANA in its sole discretion, may order the vessel to proceed to such port and lessee will pay GRANCOLOMBIANA \$2,000.00 U.S. Currency for the deviation of the vessel plus the inward and outward port charges incurred by the vessel in the fulfillment of such call and all expenses incurred in unloading said cargo plus wharfage shall be for lessee's account.

Should GRANCOLOMBIANA, in its sole discretion, decide that such call cannot be performed by the subject vessel, GRANCOLOMBIANA will notify lessee accordingly and no liability whatsoever will attach to GRANCOLOMBIANA for its

refusal to deviate. In such event lessee shall be obligated to perform unloading operations at Philadelphia. Lessee shall have the option to carry on unloading operations in accordance with the terms of this contract at New York, New York provided that it gives GRANCOLOMBIANA notice to that effect at least two (2) days prior to the expected time of arrival at the port of Philadelphia, Pa. and in such event there shall be no deviation charges incurred by lessee for unloading at New York, New York in lieu of Philadelphia, Pa., it being understood and agreed however that such unloading at New York shall be at lessee's sole risk and expense and shall constitute a waiver of all responsibility on the part of GRANCOLOMBIANA which shall have the right to continue its scheduled calls of the vessels at Philadelphia, Pa. and Baltimore, Md. prior to their arrival at New York, New York.

• • • • •

24. In addition to the irrevocable letter of credit which lessee will cause to be opened and maintained in the amount of \$45,000.00 U. S. currency in favor of GRANCOLOMBIANA as hereinabove set forth in Clause No. 17, lessee will cause to be opened and maintained another irrevocable letter of credit with a New York bank and confirmed by, and payable by a New York bank in favor of GRANCOLOMBIANA in the amount of \$50,000.00 U. S. currency. Said letter of credit shall continue in full force and effect until August 15, 1957. Said letter of credit will be opened for one (1) year; and ten (10) days prior to the expiration thereof, lessee shall cause to be opened a new letter of credit for \$50,000.00 for a further period of one (1) year in favor of GRANCOLOMBIANA as herein provided to take effect upon release by GRANCOLOMBIANA of the expiring letter of credit; and ten (10) days prior to the expiration of said second letter of credit lessee shall again cause to be opened a new and third letter of credit as herein provided to expire on August 15, 1957 and to take effect upon release by GRANCOLOMBIANA of the expiring second letter of credit.

Failure to open and deliver to GRANCOLOMBIANA a second, and a third, letter of credit, as herein provided, ten (10) days prior to the expiration of the then expiring letter of credit shall constitute a breach of this agreement by lessee, provided such failure shall not have been caused by the failure of GRANCOLOMBIANA to release the expiring letter of credit.

The lessee agrees that in the event he shall either breach this contract or terminate the same without cause prior to the expiration date hereof, GRANCOLOMBIANA shall have the right to draw against said letter of credit by simple draft in the sum of \$50,000.00 as agreed liquidated damages and not as a penalty for such breach or unlawful termination; and to the extent that there may be a balance remaining in the aforesaid letter of credit referred to in Clause No. 17, then GRANCOLOMBIANA shall be entitled to draw on the same to the extent of \$30,000.00 thereof, and no more, as additional agreed liquidated damages and not as a penalty for lessee's breach or unlawful termination of this contract. Upon payment to GRANCOLOMBIANA of the aggregate of \$80,000.00 covered by both said letters of credit, and no more, in the event of breach or unlawful termination by lessee, there shall be no further liability on the part of lessee to GRANCOLOMBIANA by reason of a breach of this contract or an unlawful termination thereof and any excess remaining in the aforesaid letters of credit shall be released to lessee.

\* \* \* \* \*

**Exhibit 16**

THIS AGREEMENT made and entered into this 22nd day of May, 1957, by and between FLOTA MERCANTE GRANCOLOMBIANA S. A., a Colombian corporation, with its principal place of business in the City of Bogota, Republic of Colombia, South America, hereinafter called "GRANCOLOMBIANA", acting through its duly authorized agent, the North American Division of TRANSPORTADORA GRANCOLOM-

BIANA LTDA., a Colombian Limited Liability Corporation, authorized to do business in the State of New York, U.S.A., having its office at 52 Wall Street, New York, New York, and PANAMA ECUADOR SHIPPING CORPORATION, a Panamanian corporation with its principal place of business in the City of Panama, Republic of Panama, hereinafter called "lessee"

### WITNESSETH

WHEREAS, Grancolombiana entered into a contract on July 20, 1955 with Leonard Morey and Samuel G. Staff, which contract was subsequently assigned to the Lessee; and

WHEREAS, the said contract provides that it would terminate on July 19, 1957 unless the Lessee exercised its option, pursuant to Clause 19 of said contract to renew the contract for three (3) additional years, commencing July 20, 1957; and

WHEREAS, the Lessee has advised Grancolombiana, in writing that it desires to exercise its option and renew said contract for three (3) additional years; and

WHEREAS, Grancolombiana is agreeable to extending the said contract for three (3) additional years.

NOW, THEREFORE, IT IS MUTUALLY AGREED, as follows:

1. That the term of the contract heretofore entered into by Grancolombiana and the Lessee, is hereby extended from July 20, 1957 to July 19, 1960.

2. Clause 5, Sub-divisions (a) and (b) of said contract shall be deemed amended to read as follows:

(a) During thirty-nine (39) weeks of each calendar year, the following specific rates which represent the full hire for the total refrigerated space of No. 3 hold of each vessel on each northbound voyage:

SHIP	1st year	2nd year	3rd year (subject to increase as hereinafter provided)
CD. DE MANIZALES	\$ 7,700.00	\$ 8,050.00	\$ 8,050.00
CD. DE QUITO	11,000.00	11,500.00	11,500.00
CD. DE MEDELLIN	14,300.00	14,950.00	14,950.00
CD. DE IBAGUE	15,950.00	16,675.00	16,675.00
CD. DE CALI	15,950.00	16,675.00	16,675.00

which Lessee will pay for each northbound voyage of the subject vessels regardless of the quantity of bananas shipped and regardless of whether or not any shipment is in fact made, except for such causes as are herein specified in sub-paragraph (g) of this clause. Lessee has the option at any time to carry other produce subject to written approval of Grancolombiana which shall not be unreasonably withheld.

(b) During 13 weeks of each Calendar Year, to be specified by the Lessee, the Lessee will be responsible, only, for the payment of a minimum hire for each vessel, as follows:

SHIP	1st year	2nd year	3rd year (subject to increase as hereinafter provided)
CD. DE MANIZALES	\$ 4,400.00	\$ 4,600.00	\$ 4,600.00
CD. DE QUITO	7,370.00	7,705.00	7,705.00
CD. DE MEDELLIN	8,800.00	9,200.00	9,200.00
CD. DE IBAGUE	10,230.00	10,695.00	10,695.00
CD. DE CALI	10,230.00	10,695.00	10,695.00

through the payment of which the Lessee is entitled to ship up to the following amount of banana stems in each vessel:

CIUDAD DE MANIZALES	4,000 stems
CIUDAD DE QUITO	6,700 stems
CIUDAD DE MEDELLIN	8,000 stems
CIUDAD DE IBAGUE	9,300 stems
CIUDAD DE CALI	9,300 stems

Lessee will pay for each northbound voyage of the subject vessels during these thirteen weeks the minimum hire specified above regardless of Lessee's ability to ship in each vessel the number of stems to which Lessee is entitled and regardless of whether or not any shipment is in fact made, except for such causes as are hereinafter specified in subparagraph (g) of this clause.

Lessee will have the privilege to ship, during said 13 weeks, any additional amount of banana stems, that the vessels can take, over and above the limit to which Lessee is entitled as aforementioned, and Lessee will pay Grancolombiana at the rate of One Dollar and twenty-five cents (\$1.25) per each additional stem thus shipped during the term of this contract, subject however to any increase in rate during the third year of this contract as hereinafter provided, but in no case will Lessee be obligated to pay, in the aggregate, regardless of the additional amount of stems loaded in each vessel, a higher freight than those specified in above sub-paragraph (a) of this clause for the full refrigerated capacity of each subject vessel.

It is hereby agreed between the parties that in the event the cost of operation of Grancolombiana's vessels shall increase during the third year of this contract, such increased cost shall include but not be limited to increases in the cost of overhead, insurance, repairs, food, taxes, supplies, port charges, stevedores, tugs, fuel oil, crew wages, etc., Grancolombiana shall have the right, in its sole and

absolute discretion, to increase the minimum price hereinabove set forth for the carriage of bananas during the third year of this contract in an amount commensurate with such increased costs and the Lessee agrees that it shall accept and be bound by any such increases which Grancolombiana may make for the carriage of bananas during the said third year period of this contract.

3. Clauses 17 and 24 of said contract shall be deemed amended and modified only to the extent that the letters of credit referred to therein shall be maintained until August 15, 1960.

\* \* \* \* \*

7. All of the remaining terms and conditions of the contract entered into between Grancolombiana and the Lessee's assignor on the 2nd day of July, 1955, shall remain in full force and effect as if this agreement had not been entered into and all rights and obligations under said agreement of July 2, 1955 are expressly assumed by this Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

\* \* \* \* \*

#### Exhibit 17

July 11, 1958

Panama Ecuador Shipping Corp.  
22 E. 4 Street  
New York, N. Y.

Gentlemen:

We refer to agreement dated July 20, 1955 which was subsequently assigned to you by Messrs. Morey and Staff and to agreement entered into with your good selves on May 22, 1957 extending the term of the original agreement to July 19, 1960 and modifying the said original agreement in various respects.

We have noted your requests for certain changes to be made therein and we are pleased to advise you that we



are prepared to change the said agreement, as extended, in the following respects:

1—The vessels that will be engaged on July 1st and thereafter in this trade will be the “Ciudad de Tunja”, “Manuel Mejia”, “Cartagena de Indias”, “Ciudad de Barranquilla”, “Ciudad de Pasto” and “Ciudad de Guayaquil” or “Ciudad de Ibague” in substitution for the ones designated in Clause No. 1 of the original agreement, without prejudice to Grancolombiana’s right as established in Clause No. 3 of the original agreement, as extended regarding control and disposition of schedules, sailings, arrivals, as well as replacement, cancellation and/or substitution of vessels as hereinafter established.

2—Clause 5, Sub-divisions (a) and (b) of the original agreement, as modified by paragraph 2 of the extension agreement dated May 22, 1957, shall be deemed amended to read as follows:

(a) The basic rates of hire for the refrigerated space of each of the above mentioned vessels is \$14,500.00 for the use of the entire refrigerated capacity of number 3 hold; however it has been mutually agreed that during the year commencing July 1st, 1958 and ending June 30, 1959 Lessee will pay Grancolombiana for the use of the refrigerated capacity of the subject vessels, free in and out of said vessels as follows:

(b) During thirty-nine (39) weeks of above mentioned year to be specified by the Lessee, the Lessee shall be responsible, only, for the payment of a minimum hire of \$14,000.00 for each northbound voyage of each vessel through the payment of which the Lessee is entitled to ship up to 14,000 stems of bananas per voyage.

(c) During ten (10) weeks of above mentioned year to be specified by the Lessee, the Lessee shall be responsible, only, for the payment of a minimum hire of \$9,300.00 for each vessel through the payment of which the Lessee is entitled to ship up to 9,300 stems of bananas per voyage.

(d) During three (3) weeks of above mentioned year to be specified by the Lessee, the Lessee shall be responsible, only, for the payment of a minimum hire of \$7,250.00 for each vessel through the payment of which the Lessee is entitled to ship up 7,250 stems of bananas per voyage.

(e) Lessee will pay for each northbound voyage of the subject vessels, during these fifty-two (52) weeks, the minimum hire specified above regardless of the quantity of bananas shipped and regardless of whether or not any shipment is in fact made, except for such causes as are herein specified in sub-paragraph (g) of Clause 5 of the original agreement.

(f) Lessee shall have the privilege to ship, during said fifty-two weeks (52) any additional amounts of banana stems that the vessels can take, over and above the limit to which Lessee is entitled as aforementioned, and Lessee will pay Grancolombiana at the rate of \$1.00 for each additional stem thus shipped, it being understood however that Lessee shall not be required to pay hire in excess of \$15,000.00 per voyage regardless of the amount of banana stems shipped over and above 15,000 stems per voyage.

3—Clause 5, Sub-division (d) of the contract dated July 20, 1955, as extended by agreement dated May 22, 1957, shall be deemed amended to read as follows:

The Lessee shall have the option to load bananas at Guayaquil or Puerto Bolivar without incurring any surcharge however, it is expressly understood that Grancolombiana, at its sole discretion, shall have the right to tender the vessels for loading at the port of Puna in place and stead of Guayaquil and in the event any vessel is tendered by Grancolombiana under agreements dated July 20, 1955, May 22, 1957 and this agreement, at any port, the Lessee shall remain liable for hire regardless of whether or not any bananas are shipped by the Lessee except for such causes as are specified in Clause 5, Sub-division (g) of the original agreement.

4—Paragraph 3 of agreement dated July 20, 1955, as extended by agreement dated May 22, 1957, is hereby amended to read as follows:

The schedule of sailings of the afore-said vessels or any of them, shall, at all times, be subject to the complete disposition and control of Grancolombiana as to all circumstances connected with said sailings, including but without any limitation, the time, date and hour, and place of departure, the various ports of call, and the time, date and hours, and place of arrival, as well as replacement, cancellation and/or substitution of vessels; however, Grancolombiana agrees to expedite the sailing of the subject vessels from Guayaquil, Puerto Bolivar or Puna upon completion of the loading of bananas and to run them in their north-bound voyages, from Guayaquil, Puerto Bolivar or Puna to Philadelphia, reserving its right to call at any intermediate South American ports, for a total period of time not exceeding sixty (60) hours. It is estimated that within normal conditions these vessels will make this run between Guayaquil, Puerto Bolivar or Puna and Philadelphia in a maximum of twelve (12) days, it being understood that Grancolombiana will use its best effort to have the vessels, whenever possible, arrive at Philadelphia between Mondays and Fridays of each week; should any vessel herein named make this run, within normal conditions, in more than twelve (12) days, counting said period from the date and hour of its departure from its port of loading bananas under this agreement, then Grancolombiana shall pay Lessee for each hour or fraction thereof beyond said period of twelve (12) days at the rate of U. S. \$100.00 per hour or fraction thereof.

5—The terms of this agreement only insofar as they modify the original agreement dated July 20, 1955 as extended by agreement dated May 22, 1957, shall be effective between the period commencing July 1, 1958 and ending June 30, 1959.

All of the remaining terms and conditions of the contract entered into between Grancolombiana and your assignors on July 20, 1955, except as modified by agreement dated May 22, 1957, shall remain in full force and effect as if this agreement had not been entered into and all the rights and obligations under said agreement of July 20, 1955 as modified by extension agreement dated May 22, 1957, are expressly assumed by your goodselves.

If you are in agreement to these terms and conditions, kindly signify your acceptance by signing the original of this letter and returning same to us.

Very truly yours,

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

By: TRANSPORTADORA GRANCOLOMBIANA, LTDA.

By:

Accepted:

PANAMA ECUADOR SHIPPING CORP.

### Exhibit 18

Translation From Spanish

7735

MINUTES N° 480

March 5th, 1957

.....

NEW CONTRACT FOR TRANSPORTATION BANANAS GUAYAQUIL-PHILADELPHIA—Doctor Diaz continued submitting his report and mentioning the facts relating to the present contract had with the Ecuadorian Fruit for transportation of bananas Guayaquil-Philadelphia, and other pertinent matters concerning its renewal. He made a lengthy report on the various refrigerated capacities of the steamers being used in the New York-Buenaventura-Guayaquil service, mentioning the fact that because they all vary in size, this was rather difficult for the purpose of leasing this space; that the first contract was executed with Mr. Luis Noboa

upon maturity of which there was a continuity solution of approximately two years, because the lessee, Mr. Noboa had cancelled his negotiations with the Standard Fruit.

That, on July 20th., 1955 there was executed a new contract with the Ecuadorian Fruit, represented by Messrs. L. Morey and Samuel G. Staff, which has been fulfilled by both parties satisfactorily, and which will run until July 19th. of the current year.

That, as the Board will recall, the Ecuadorian Fruit was sustaining losses in its business for some time, as the results of which the Board ordered a refund to them of \$1000.00 per shipment and which, because of a decision from the Management, will not be in effect commencing from March 1st. of this year, considering that the abnormal competitive conditions then existing for the contractors have now disappeared, and said contractors are now doing business in a regular manner and obtaining regular or reasonable profits.

That, as the results of the above contract, the "Flota" has collected from Ecuadorian a gross freight total amounting to US\$826,099.00 plus US\$7,474.00 for the rental of the conveyor in unloading operations.

That, as the results of damages to five shipments, the Ecuadorian lodged claims for US\$130,000.00, but that he was able to settle same, as the Board is already aware, for the amount of US\$20,000.00 which is equivalent to a deduction of 2.42% which is a very low percentage in comparison with the usual 15% deduction which applies to this type of transportation.

That, inasmuch as the present contract shall mature in the very near future and, notwithstanding the fact that it includes a 3 years' option on behalf of the lessees, he has had a legal opinion issued as to said extension under the terms of the option for the purpose of avoiding a possible litigation or demand (suit) against "Flota" as

was the case with "Grace", on the basis of American legislation which calls for open bids in these cases or to hear and consider proposals from any other interested shippers. That the legal opinion was rendered by the attorney, Mr. Renato Giallorenzi, of New York, who considers that the option is valid, but advises that, if there are any other bidders, they should be given the terms and conditions of "Flota" and their proposals should be considered.

That, on the strength of the foregoing, Mr. Consolo was given an opportunity to submit his proposal, which he has not done as yet, and it is believed that he will not submit any; but, in any case, "Flota" submitted to him its terms and conditions by means of a letter N° GM-2479 dated at New York on February 26th., 1957. That the Atlantic Fruit Steamship Co., represented by Mr. Consolo has until March 10th. of this year to submit its proposal.

That, the only two proposals already made and which he has brought to the consideration of the Board, are from Mr. Luis A. Noboa N., in a letter dated at Guayaquil on February 20th., last, and from Mr. Samuel G. Staff representing the Ecuadorian Fruit. That he instructed the Cost Department to prepare a comparison chart between the prices proposed by Mr. Noboa and those proposed by Mr. Staff and, from the results obtained, it is evident that in the three years of the fulfillment of the contract there would be a difference amounting to US\$28,772.00 approximately in favor of the proposal from Mr. Staff. That the rates proposed by Mr. Noboa are fixed, with one figure for the 38 weeks of standard market operations and a lower figure for the 14 summer weeks. Mr. Noboa also proposes that "Flota" agree to unload the bananas either in Jacksonville, Charleston, Philadelphia and/or New York which is, to all intents and purposes not advisable, because it would affect the regular schedule of the New York-Guayaquil service. That the principal characteristics of Mr. Staff's proposal include in the rate offered, an increase of

10% above present prices for the first year; an increase of 15%—also on current rates—for the second year, and a minimum increase of 1% (also on present prices or rates) for the third year, which increase for the third year may be higher if justified by increased costs to “Flota”.

That the other terms of the contract in force, such as the letters of credit for non-fulfillment of the contract and for the payment of freight charges, will remain unchanged. That, in closing, he feels that this proposal is preferable by all means, unless the Board has a different opinion, and he favors the proposal submitted by Mr. Staff in representation of the Ecuadorian Fruit.

The Board unanimously agreed with the considerations and opinion of the General Manager, and the President of the Corporation, Mr. David Peralta, stated that he was personally very pleased to see that the advantages shown were in favor of the proposal from Ecuadorian Fruit, because this firm had opened a new market for the Ecuadorian fruit, which is decidedly most convenient to the interests of Ecuador, which facts make the proposal from Ecuadorian Fruit preferable in his personal opinion, even under relatively lower conditions, above any other proposals which do not meet the requirement which he had just mentioned.

.....

MINUTES N° 482  
March 13th, 1957

.....

PROPOSAL BANANAS GUAYAQUIL-PHILADELPHIA—Dr. Diaz read a proposal from the Atlantic Fruit Steam Ship Company, represented by Mr. Philip R. Consolo, whereby they would take the refrigerated rooms for the transportation of bananas in the Guayaquil-Philadelphia service, and which appears in letter dated the 6th. inst. and signed by the above mentioned Mr. Consolo. That, insofar as prices are concerned, the Board can see that this proposal is lower than the one from Mr. Staff for the first year and

"a fortiori" for the second and third years; that, furthermore, Mr. Consolo requested that the selection of the ports of destination be left to the option of the lessee, which is unacceptable because, as he had mentioned in a previous occasion when referring to Mr. Noboa's proposal, such option would be detrimental to the schedule of the Steamship Company.

The Board, thereafter, confirmed the awarding of the contract given to the Ecuadorian Fruit, represented by Mr. Samuel G. Staff.

A TRUE COPY FROM THE ORIGINAL

FLOTA MERCANTE GRANCOLOMBIANA S. A.  
(s) Policarpo Gutierrez E.  
Secretary General

\* \* \* \* \*

**Exhibit 19**

May 13, 1958

Panama Ecuador Shipping Corp.  
22 East 4th Street  
New York 3, N.Y.

*Attention: Mr. Jack Friedlander*

Gentlemen:

We have been advised by the General Manager of Flota Mercante Grancolombiana, S.A. that Flota has agreed to grant your request for an additional four weeks extension of the conditions set forth in our letter ACC-06592, dated April 28, 1958 regarding your shipments of bananas from Ecuador under corresponding agreement signed between your company and Flota Mercante Grancolombiana.

These four weeks hereby mentioned will run in direct continuation of the six weeks granted in our above mentioned letter making thus a total of ten weeks to be covered by this emergency condition.



I have been instructed to make it known to you that Flota will not be in position to grant any additional extension once these ten weeks have expired, and that all the terms and conditions of the contract will be then in full force and effect.

You will, no doubt, realize that Flota has responded in a great spirit of cooperation, and has made substantial sacrifice to meet your request. Flota expects that you will be able during the period of this four weeks extension to arrange the necessary to resume normal shipments.

Yours very truly,

TRANSPORTADORA GRANCOLOMBIANA, LTDA.  
JOSE J. BORRERO  
Acting General Manager  
Northamerican Division

JJB:do

cc: Comptroller, N.Y.

Dr. Diaz, Bogota

PANAMA-ECUADOR SHIPPING CORP.

May 6, 1958

Flota Mercante Grancolombiana  
79 Pine Street  
New York, New York

Gentlemen:

Written notice is hereby given to you pursuant to Paragraph 5, Sub-section (g) of our agreement dated July 20, 1955, and as renewed by agreement dated May 18, 1957 not to load any further bananas for the reason that a blight exists on the plantations in Ecuador and the fruit cut is unmarketable.

You have been previously advised as to the existence of the blight and have all of the material evidencing same.

Until the blight is terminated, there is to be no loading of bananas.

Very truly yours,

PANAMA-ECUADOR SHIPPING CORP.  
Jack Friedlander  
Treasurer

JF:RRN

cc: Dr. Diaz

J. Borrero

S. D. Zevallos

D. Galton

April 28, 1958

Panama Ecuador Shipping Corp.  
527 Lexington Avenue  
New York, N.Y.

Gentlemen:

We wish to advise you that on April 21, 1958 the Board of Directors and the General Manager of Flota Mercante Grancolombiana, S.A., agreed, in accordance with your request, to grant you for a period of six weeks only; said period to commence with the sailing of the "MANUEL MEJIA"—Voyage 5—on April 2, 1958, the following changes in your existing contract:

- a) Panama Ecuador Shipping Corp. agrees to load on the ships of the Guayaquil-New York line, on a weekly basis, up to 6,500 stems of bananas and is obligated to pay Flota Mercante Grancolombiana, S.A., as hire, the amount of US \$8,000.00 per ship, within the terms and conditions stipulated in the contract in force.
- b) If Panama Ecuador Shipping Corp. does not load one or more ships, or loads a quantity smaller than 6,500 stems, nevertheless it shall pay Flota Mercante Grancolombiana, S.A., within the terms and conditions stipulated in the contract in force, the amount of US \$8,000.00.

- c) If Panama Ecuador Shipping Corp. should ship a larger quantity of stems of bananas than the 6,500 stems mentioned in point a) of this contract, it shall pay Flota, within the terms and conditions stipulated in the contract in force, in addition to US \$8,000.00 for hire, the amount of US \$1.25 per each stem in excess of 6,500 stems.
- d) If Panama Ecuador Shipping Corp. wishes to load at Puerto Bolivar, then, it is obligated to pay Flota Mercante Grancolombiana, S.A., within the terms and conditions stipulated in the contract in force, in addition to the US \$8,000.00 for the hire of the refrigeration space of each vessel, the amount of US \$350.00 per each vessel, to compensate for the port charges, etc.
- e) The term of this agreement is for six weeks starting with the shipment of bananas on the M/S "MANUEL MEJIA"—Voyage 5—on April 2, 1958 and it cannot be extended for any reason.

It is especially understood and agreed that all of the remaining terms and conditions of said contract continue in full force and effect and without modification.

It is further understood and agreed that at the end of the said period of six weeks to commence on April 2, 1958, the changes in the contract enumerated "A to E" above, will cease and terminate and hire will be paid in accordance with the terms and conditions of said contract. This concession on Flota Mercante Grancolombiana, S.A.'s part

shall not be construed as a waiver, past or present, of any of its right under said contract.

Very truly yours,

TRANSPORTADORA GRANCOLOMBIANA, LTDA.  
J. J. Borrero  
Acting Manager  
North American Division

JJB/aw

The foregoing terms and conditions are accepted and agreed to:

By: .....

PANAMA-ECUADOR SHIPPING CORP.

May 8, 1958

Panama-Ecuador Shipping Corp.  
22 E. 4 Street  
New York 3, N.Y.

*Attention: Mr. Jack Friedlander*

Dear Sir:

We acknowledge receipt of your letter dated May 3, 1958 addressed to our Principal, wherein you advise that the loading of bananas will be suspended in view of a blight which is now existing on the plantations, in Ecuador and accordingly you invoke Paragraph 5, Sub-Section (g) of agreement dated July 2, 1955, which was extended by agreement dated May 16, 1957.

In our opinion you have failed to furnish us with any evidence which would support your invoking the aforementioned paragraph 5, Sub-Section (g) of our agreement and accordingly we reject your notice to suspend loading bananas by you on our vessels under the contract.

Please be advised that Grancolombiana will continue to have its vessels call at the loading ports referred to in said agreement and in the event you fail to load bananas

in accordance therewith, claim will be made upon you for freight which will be collected against your Letter of Credit which we now hold.

Very truly yours,

TRANSPORTADORA GRANCOLOMBIANA, LTDA.

JOSE J. BORRERO,

Acting General Manager,  
Northamerican Division

JJB:dp

cc: Dr. Alvaro Diaz, Bogota

Date 11-6-57

ACION

nión en Aduana Para Tratar Sobre  
que Iría a Muelles de Pto. Nuevo

Reservada Instalóse Comisión  
de Cámara de Comercio, Ayer

una de ayer, lle-  
el no bantien  
impedí el  
Espejal de Con  
edior Juan Celvo  
mismo que fue  
el Ministro del  
a semana anti-  
abía estado el  
para que tome  
ro.  
no que tan gran  
todas los requi-  
e cabrá en  
en importante  
Calvo Santistá-  
; LA

—La firma ESSENTIAL PRO  
DUGGS Co., INC., 90 West  
Street, New York 5, N. Y., me  
el Primer diente comunicación dirigida a  
la Cámara de Comercio ofec-  
a los embotelladores de beb-  
as, o importadores interesados  
un renson completo de sabo-  
res para esa industria: espe-  
cialmente del nuevo p'oducto  
Sno Cola 1-30. Manifestan-  
que pueden enviar de los in-  
erías a solicitud comunicación  
directa con ellos.  
—Ambos se ofrecia ante-  
riormente por J. J. POSER &  
331 West 30th St., New  
York 1, N. Y., dirigen  
comunicación expresando  
además de los tubos perfura-  
dos para cubrir los rasmos de  
banano, ofrecen también la ma-  
quina-ia, equipo v material cru-  
do de plástico para la elabora-  
ción de esos tubos.  
—Al ser visitado al  
lirredo Moreira  
comisión de la  
aria, la misma  
ridida por el  
nia, Torres D.  
—El ingeniero Teón

Mercado de Valores  
NUEVA YORK, 15. —(UPI)

# FLOTA MERCANTE GRANCOLOMBIANA, S. A.

Seccional del Ecuador

## MN "CIUDAD DE PASTO"

Arriba hoy procedente de Nueva York y zarpa-  
rá mañana rumbo al Callao. Estará nuevamente en  
este Puerto el 27 del presente y zarpará el 29 con  
destino a Nueva York, con escalas en Buenaventu-  
ra, Filadelfia y Baltimore.-

Recibe carga directa para dichos Puertos y de  
trasbordo.

EMBARQUE "VIA GRANCOLOMBIANA"

## CAMIONETA MARIA ELENA

Saló de Guayaquil desde hoy todos los días para Ya-  
guachi, Jujan y Babahoyo a las 6 p.m. Estación Parque  
Pto. Aconcagua, Caltán v Chimbazara (seccional).

**EN ESTA  
CARRERA  
DE SUEROS  
Y CARROS**

**UD. PUEDE  
SER EL  
GANADOR**

Para el perfecto funcionamiento  
de su auto o camión.

**REPUESTOS LEGITIMOS**

**TAUNUS Ford EDSEL**

Le economizan tiempo y dinero

**Exhibit 25**

New York, February 26, 1957

Atlantic Fruit Steamship Company  
44-25 North Michigan Avenue  
Miami, Florida

Att: Mr. Consolo  
Re: Refrigerated space vessels  
Ecuador/New York bound.

Dear Sir:

In regard to your telephone request we are giving you herewith the refrigerated capacities of the vessels that are at the present time engaged weekly in the transportation of bananas from Guayaquil to the United States as follows:

CIUDAD DE MANIZALES	—27,610 cu. ft.
CIUDAD DE QUITO	—43,120 " "
CIUDAD DE MEDELLIN	—56,020 " "
CIUDAD DE IBAGUE	—62,115 " "
CIUDAD DE CALI	—62,115 " "

We understand that it was your intention to favor our company with a bid for the above refrigerated space for the transportation of bananas from Ecuadorian ports to a United States North Atlantic port, and if this is the case

we advise you to submit such proposal to our Principal Office in Bogota:

Flota Mercante Grancolombiana, S.A.  
Apartado Aereo 44-82  
Bogota, Colombia  
Attention: General Manager,

no later than March 10th.

Yours very truly,

TRANSPORTADORA GRANCOLOMBIANA, LTDA.  
JOSE J. BORRERO  
Acting Manager

JJB:dp

Source: Files of Mr. Consolo

March 6, 1957

Flota Mercante Grancolombiana, S.A.  
Apartado Aereo 44-82  
Bogota, Colombia

Dear Sir:

With reference to a letter from your New York office of February 26, 1957, I am making the following proposal on your ships respectively:

CIUDAD DE MANIZALES	27,610 cu. ft. we offer	\$7,000
		per trip

CIUDAD DE QUITO	43,120 cu. ft. we offer	\$10,000
		per trip

CIUDAD DE MEDELLIN	56,020 cu. ft. we offer	\$13,500
		per trip

CIUDAD DE IBAGUE	62,115 cu. ft.}	we offer \$15,000
CIUDAD DE CALI	62,115 cu. ft.}	
		per trip

We understand from your New York office that these ships load at Guayaquil, Ecuador, and come to North Atlantic ports at the discretion of the shipper.



All further details pertaining to a contract will be worked out mutually.

Very truly yours,

PHILIP R. CONSOLO  
4425 N. Michigan Ave.,  
Miami Beach, Florida

*Translation*

FLOTA MERCANTE GRANCOLOMBIANA  
Bogota Office

Bogota, March 25, 1957  
S.G.—06413

Mr. Philip R. Consolo  
4425 N. Michigan Ave.  
Miami Beach, Florida

Dear Sir:

We acknowledge receipt of your kind communication of the sixth instant in response to our #6M-2479 dated New York, February 26th last and addressed to the Atlantic Fruit Steamship Company marked to your attention. The offers contained in yours of March 6 which we are here answering are being considered together with other proposals by the Board of Directors and by the General Management of the Company.

We express to you our thanks and remain your attentive friends and servants,

FLOTA MERCANTE GRANCOLOMBIANA, S.A.  
Alvaro Diaz S.  
General Manager

*Translation*

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

Bogota Office

S.G. 13527

Bogota, June 21, 1957

Mr. Philip R. Consolo  
4425 N. Michigan Ave.  
Miami Beach, Florida

Re: Rental of Refrigerated Space  
on Our Ships

Dear Sir and Friend:

We refer to your kind communication of the 6th of March last in which you made us an offer to lease refrigerated chambers on our ships for the carriage of bananas between Guayaquil and the Atlantic ports of the United States.

In this regard, we must inform you that your proposal, together with others of similar nature presented to us in due time, was duly studied by the Managing Board of the Company in a session held on the 13th of March of this year, and in Minute No. 482, the Board resolved to award the contract to another firm because the prices offered by the concern to whom the contract was awarded are higher and the other terms of its offer more favorable to the carrier.

At the end of the period in which the contract we refer to above remains in force, we will be very pleased to receive another bid from you if you are still interested in this trade.

Very truly yours,

FLOTA MERCANTE GRANCOLOMBIANA, S.A.

Policarpo Gutierrez E. /s/

Policarpo Gutierrez E.

Director General of Cargo

4425 No. Michigan Ave.

Miami Beach, Fla.

August 23, 1957

Flota Mercante Grancolombiana, S. A.  
Apartado Aereo No. 4482  
Bogota, Colombia.

Gentlemen:

I am in receipt of your letter of June 21st and wish to again apply for space on your ships due to a recent ruling from the Maritime Commission on Dockets #771 and #775.

Before issuing any allotment of space on your ships, I wish to be considered for a fair and reasonable amount since I have consistently been asking for space on your ships for the past two years.

We further wish to advise you that unless we are allotted a fair and reasonable amount, we will be forced to file a formal complaint.

Please be kind enough to send me your reply to the above address.

Very truly yours,

Philip R. Consolo

Bogotá, October 7th, 1957

Mr.

PHILIP R. CONSOLO  
4425 No. Michigan Ave.  
Miami Beach, Fla.

Dear Sir:

We acknowledge receipt of your letter dated August 23th, 1957, and wish to advise you that the available reefer space on our vessels has been committed for the next two years.

Of course, we shall be pleased, at the end of said term, to consider your application for allotment of space on our vessels.

We regret that at the present time we cannot be of service to you.

Very truly yours.,

FLOTA MERCANTE GRANCOLOMBIANA, S.A.  
Policarpo Gutierrez E.  
Secretario General.

October 21, 1957

Flota Mercante Grancolombiana, S.A.  
(Transportadora Grancolombiana)  
52 Wall Street  
New York, New York

Gentlemen:

We are the attorneys for Mr. Philip R. Consolo, who, by written communications of March 6 and September 20, 1957, (in addition to several oral requests) applied for refrigerated space on your vessels from Ecuador to United States Atlantic ports, for transportation of bananas. Your reply of June 21, 1957, to Mr. Consolo's communication of March 6, states that you awarded space to other applicants after space had been requested by Mr. Consolo.

Decisions of the Federal Maritime Board hold that the transportation of bananas on liner services such as yours constitutes common carriage and requires fair distribution of space among qualified applicants. On behalf of Mr. Consolo, we request an allotment, for a two-year period, of refrigerated space on each of your vessels equipped for the transportation of bananas from Ecuador to Atlantic ports of the United States. Mr. Consolo's requirements are 40,000 cubic feet on each vessel, subject to adjustment to take account of the size of refrigerated chambers and other relevant considerations.

If this request is not met by November 15, 1957, Mr. Consolo will file a complaint against your company with the Federal Maritime Board, demanding an allotment of

space and damages for unlawful exclusion from your vessels.

Very truly yours,

George F. Galland

**Exhibit 45**

August 6, 1957

Transportadora Grancolumbiana, Ltd.  
52 Wall Street  
New York 4, N. Y.

Dear Sir:

A client of my office is most anxious to import bananas from Ecuador to any Atlantic Coast port of the United States, preferably New York or Philadelphia. I should like to request, therefore, that you make available to said client 50,000 cubic feet of refrigerated space weekly on your vessels plying in this trade.

Your company is undoubtedly familiar with the recent decision of the Federal Maritime Board in *Banana Distributors, et al. v. Grace Line* (decided April 30, 1957). This Report of the Federal Maritime Board reaffirms the Board's earlier decision in *Consolo v. Grace Line*, 4 F.M.B. 293 (1953), holding that Grace Line, because of its undisputed method of operation as a common carrier, must also be a common carrier of bananas, and that Grace must, by virtue of the Shipping Act, 1916, as amended, make its banana carrying refrigerated space available to the qualified shipping public on some equitable basis of allotment.

The status of the Grace Line as a common carrier of bananas from Ecuador to the United States is in all essential respects similar to the status of the Grancolumbiana Line. Your company, as I am sure you will recognize, is required by the law of the United States, *viz.* the Shipping Act, 1916, as amended, to be a common carrier of bananas

and to prorate your refrigerated space, suitable for the carriage of bananas, between qualified banana shippers on an equitable and fair basis.

The company which I represent is fully capable of conducting all aspects of a banana importing business. We will be willing to make available to you our financial and bank references and to meet such reasonable financial requirements as you may legally impose. The company will also be willing to enter into a guaranteed forward booking arrangement for a definite amount of refrigerated space weekly within the limits of your obligations as a common carrier.

This company is also most anxious to import approximately 15,000 stems of bananas weekly from Ecuador to the Pacific Coast of the United States. In anticipation of the inauguration of your refrigerated service in that trade, I should like to request that you arrange to make available to my client approximately 60,000 cubic feet of refrigerated space weekly in your service from Ecuador to a convenient port of discharge on the Pacific Coast of the United States.

I would appreciate your prompt reply on this matter and will assure you that my client will be most anxious to supply whatever further information you may desire.

Yours very truly,

Richard W. Kurrus

**Exhibit 47**

Bogotá, August 21, 1957

Mr. Richard W. Kurrus,  
Attorney At Law,  
243 Washington Building,  
Washington, D. C.

Dear Sir:

We acknowledge receipt of your letter dated August 6th, addressed to our office in New York, in which you inform us that a client of your office is anxious to import bananas from Ecuador and request that we make available to said client a weekly refrigerated space in our vessels plying between Ecuador and New York or Philadelphia.

We wish to advise you that we recently called for bids from shippers that showed interest in connection with this space, and after receiving the various bids we allocated the space under a forward booking arrangement to the successful bidder.

We have taken note of your application for space in our vessels plying between Ecuador and the ports of New York or Philadelphia, and we will be happy to advise you upon termination of the present contract, so that you may favor us with your bid in the event you decide to do so. In the interim, we would appreciate it if you would furnish us with the following information, so that we may become acquainted with the demands of your client:

- a) Number of bananas sought to be shipped.
- b) Frequency of shipment.
- c) Name of plantations from which the bananas will originate.
- d) Names of officers, stockholders and directors of shipping and receiving corporations.

- e) Financial statements of both corporations duly certified by Public Accountants.
- f) Ports for which bananas will be destined.
- g) Generally, any other information required, which you deem necessary.

We want to inform you that our Company, Flota Mercante Grancolombiana, is not considering now the establishment in a near future, of refrigerated service between Ecuador and the ports of the Pacific Coast of the United States.

With nothing else on hands, we remain,

Yours very truly,

FLOTA MERCANTE GRANCOLOMBIANA, S.A.  
ALVARO DIAZ S.  
General Manager

**Exhibit 75**

THIS AGREEMENT made and entered into this 3rd day of July, 1957, effective June 1, 1957, by and between FLOTA MERCANTE GRANCOLOMBIANA S.A., a Colombian corporation, with its principal place of business in the City of Bogota, Republic of Colombia, South America, hereinafter called "Grancolombiana", acting through its duly authorized agent, the North American Division of Transportadora Grancolombiana Ltda., a Colombian Limited Liability Corporation, authorized to do business in the State of New York, U.S.A., having its office at 52 Wall Street, New York, New York, and GRAND SHIPPING, INC., a Panamanian corporation with its principal place of business in the City of Panama, Republic of Panama, hereinafter called "Lessee"

WITNESSETH

1. GRANCOLOMBIANA agrees to lease to LESSEE the refrigerated space existing at the present in the 'tween deck #3



of its vessels known as "CIUDAD DE NEIVA", registered in Colombia, S.A., "CIUDAD DE CUENCA", registered in Ecuador, S. A., "CIUDAD DE POPAYAN", "CIUDAD DE SANTA MARTA, registered in Colombia, S. A., for the transportation of bananas from Guayaquil to Galveston, Texas, U.S.A., on all northbound trips made by such vessels from said Ecuadorian port, via Buenaventura, Colombia, to gulf ports, U.S.A., and LESSEE hereby hires all such refrigerated space under the terms and conditions hereinafter stipulated.

\* \* \* \* \*

14. If any provision of term hereof be invalid or unenforceable for any reason, GRANCOLOMBIANA shall have the right to terminate this contract by giving seven (7) days' written notice of termination to LESSEE, but in such event LESSEE shall not be responsible to GRANCOLOMBIANA except for any hire or other expenses which it may have incurred to the date of termination. Should GRANCOLOMBIANA thereafter determine to carry bananas under freighting agreements similar to this, except for the invalid or unenforceable provision or term, then LESSEE shall have an option to enter into a new agreement with GRANCOLOMBIANA similar in all respects and terms as herein set forth except for the invalid or unenforceable provision or term; and GRANCOLOMBIANA shall advise LESSEE of its intention to carry bananas again under freighting agreements and within fifteen (15) days thereafter LESSEE shall advise GRANCOLOMBIANA whether it intends to exercise the option herein given to it to enter into a new freighting agreement. The term of said new freighting agreement shall be the period constituting the unfulfilled portion of the term of this agreement.

15. In addition to and without limiting any other rights or immunities provided for herein, no liability shall attach to GRANCOLOMBIANA if any of the terms of this agreement cannot be performed due to Act of God, War, Government, Fire, Strikes, Congestion of Ports, Explosion, or Civil

Commotion, and any other cause beyond the control of GRANCOLOMBIANA affecting its performance hereunder. Likewise, no liability shall attach to LESSEE if any of the terms of this agreement cannot be performed by LESSEE due to Act of God, War, Government, Strikes, and Civil Com-motions, affecting its performance hereunder.

. . . . .

**Exhibit 76**

June 6, 1957

Transportadora Grancolombiana Ltda.  
52 Wall Street  
New York, N.Y.

Dear Sirs:

I represent R. Dixon & Co. Inc. of 202 Franklin Street, this city, dealers in produce since 1884, specializing in the handling of bananas for more than twenty five years.

In view of the recent ruling of the Federal Maritime Board with respect to the allocation of space, will you be good enough to regard this letter as an application for refrigerated space on your regular weekly sailings between Ecuador and Philadelphia to the extent of 5000 stems of bananas each week.

Will you be good enough to acknowledge receipt of this letter affirming the allocation of such space and advise me as to how soon it will be available. Should you require any other or additional information, please feel free to call upon me.

Very truly yours,

[Illegible]

**Exhibit 80**

February 11, 1958

Transportadora Grancolombiana Ltda.  
79 Pine Street  
New York, N. Y.

Dear Sirs:

On the morning of February 11th I called at the offices of Transportadora Grancolombiana Ltda. and after trying to communicate or see Mr. Juan Borrero, I was again sent from party to party to no avail, which has finally, after these many years, exhausted my patience.

I am compelled to write this letter as I have constantly, during my many visits to New York for the past several years, been desirous of securing refrigerated space on your various steamship services for the carriage of bananas from Ecuador to U. S. Gulf and/or Atlantic ports.

Having failed in my many attempts at personal conferences and consultations with your firm, I herewith advise you that unless I receive a fair allocation of refrigerated space on your vessels for the refrigerated transportation of bananas, I shall take the proper action in an attempt to secure this space according to the Maritime Board's decision handed down in "Banana Distributor's Inc. vs. Grace Line, Inc."

Awaiting your immediate and favorable reply,

Very truly yours,

David H. Schultz

**Exhibit 81**

February 24, 1958

Mr. David H. Schultz  
2025 Westheimer  
Houston, Texas

Dear Mr. Schultz:

We acknowledge receipt of your letter dated February 11, 1958. Due to the demands which have been made upon us for refrigerated space by proposed shippers, our attorney felt obligated to apply for a declaratory judgment to the Maritime Board because such demands conflicted with our present contracts.

We enclose herewith copy of petition filed with the Maritime Board.

Very truly yours,

TRANSPORTADORA GRANCOLOMBIANA, LTDA.  
JOSE J. BORRERO,  
Acting General Manager

ENCLOSURE

**Exhibit 85**

June 6, 1957

Transportadora Gran Colombiana Ltda.  
52 Wall St.  
New York, N.Y.

Gentlemen:

We have been established as banana importers for many years. Up to the present time we have received bananas from Ecuador on the Grace Line and on the Chilean Line, and on our own vessels to New Orleans.

We are interested in shipping bananas from Ecuador to an Atlantic port on your vessels, and therefore, request that you give us a schedule of sailings from Ecuador and

also an idea of the amount of space you can allot to us on each vessel.

We are in a position to ship from 10 to 15,000 stems of bananas a week and could begin shipments upon three weeks notice.

Should you require any additional information or references of our firm, we shall be glad to furnish them on request, since we have no doubt they will be entirely satisfactory.

We would appreciate your returning the enclosed copy signed by you in acknowledgment of this request for space.

Very truly yours,

ANDES FRUIT & PRODUCE CORP.

**Exhibit 90**

November 12, 1957

Mr. Jose J. Borrero  
Manager of Operations  
Transportadora  
Grancolombiana Ltda.  
52 Wall Street  
New York 5, New York

Dear Mr. Borrero:

It certainly was nice of you to take up your time with me when I was in New York last week. I am aware of how busy you must be.

Confirming our conversation, Suwannee Steamship Company would like to make application for refrigerated space aboard your vessels for the carrying of bananas. We are interested in as much space as is possible and do not wish to limit ourselves in applying for space to any particular United States port.

In the event that it appears that space will become available, I will appreciate very much your contacting me at the earliest so that I may have time to submit any and all information about our company which you and your people may require or desire.

Thanking you for your attention to this matter, I remain,

Yours sincerely,

William D. Lovett  
Vice President

**Exhibit 91**

November 19, 1957.

Suwannee Steamship Company,  
1010 East Adams Street,  
P. O. Box 4069,  
Jacksonville, Florida.

Gentlemen:

In reply to your letter dated November 12, I enclose herewith petition which Grancolombiana filed with the Maritime Board.

Very truly yours,

RCG:LS

enc.

cc Transportadora Grancolombiana Ltda.  
Att: Mr. J. J. Borrero

**Exhibit 92**

November 9, 1957

Transportadora Grancolombiana, Ltda.  
52 Wall Street  
New York 5, N.Y.

Gentlemen:

This letter is written as a formal request for reefer space weekly from Guayaquil, Ecuador to U.S. Atlantic or Pacific ports for the transportation of bananas.

I am not unknown to your Company. The very first voyage you made from Ecuador to the States carried my bananas under the name of Grayson Shipping Lines, Inc. Subsequently, another of my firms, Banana Sales, Inc., represented Noboa here when he was shipping more or less regularly on your vessels. During 1949 and 1950 you acted as agent for our vessels under arrangements I negotiated between Mr. Jason and Hans Tobeason, Inc., and/or Haytian Commercial & Development Co., of which latter Company I was Vice President and General Manager. During that same period we transported bananas on your ships from Barranquilla, Colombia to New York.

At the time Mr. Enrique Gallardo was negotiating for the space now being utilized under contract by another company, he called me in to draft his proposals to you, and the contract entered into by you and him was largely the result of my terms and conditions. Unfortunately he was unable to handle the financing at that time, or so I have heard, and the operation never proceeded.

Presently I am a shipper and spaceholder for a small amount of fruit on the Grace Line. I ship jointly with Suwannee Steamship Company in the same chamber, as I have known and done business with Mr. W. D. Lovett ever since my days in Florida, back ten years or more ago. Of course, my present arrangements are with Wm Lovett, (Jr.), who visited your office last week. Please understand that this request is made by me alone, and is intended as such, and not in any connection with Suwannee, the Lovetts, or their affiliates.

I know that you are under present commitment for the space requested, but the Maritime Board's decision will apply equally to all Steamship Lines under their jurisdiction. Your due consideration to my request will be appreciated, and I look forward to a favorable reply shortly.

Sincerely yours,

Stanley Grayson

November 15, 1957

Mr. Stanley Grayson  
322 West 72nd Street  
New York 23, N. Y.

Dear Sir:

In reply to your letter dated November 9, 1927 addressed to Grancolombiana, I enclose herewith petition for declaratory order.

Very truly yours,

RCG:cmp  
encl.

Two copies to Transportadora Grancolombiana, Ltd.  
Attention: Mr. J. J. Borrero

Before the  
FEDERAL MARITIME BOARD

Docket No. 835

In re the Petition of  
FLOTA MERCANTE GRANCOLOMBIANA, S. A.

For Issuance of a Declaratory Order.

BRIEF FOR PETITIONER

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

AND

PROPOSED FINDINGS OF FACT AND CONCLUSIONS

\* \* \* \* \*



## TABLE OF CONTENTS

	PAGE
Statement .....	1
The Facts .....	2
I—The uncontroverted evidence leads to the inescapable conclusion that the Board's rulings in <i>Banana Distributors, Inc. v. Grace Line Inc.</i> and <i>Arthur Schwartz v. Grace Line Inc.</i> are inapplicable and accordingly petitioner is a contract carrier of bananas .....	8
Conclusion .....	17
Findings of Fact .....	18
Conclusions .....	21
* * * * *	

## ARGUMENT

## POINT I

The uncontroverted evidence leads to the inescapable conclusion that the Board's rulings in *Banana Distributors, Inc. v. Grace Line Inc.* and *Arthur Schwartz v. Grace Line Inc.* are inapplicable and accordingly petitioner is a contract carrier of bananas.

In *Carver on the Carriage of Goods by Sea Act*, Tenth Edition, 1957, the author wrote as follows at page 6:

"It is a question of fact whether a man is a common carrier or not."

It is submitted that the facts presented by the petitioner and the intervener clearly establish by uncontradicted evidence, that the petitioner cannot under any circumstances be considered a common carrier and therefore the Board's ruling in the *Banana Distributors Inc. v. Grace Line Inc.* and *Arthur Schwartz v. Grace Line Inc.* are inapplicable.

The Federal Maritime Board concluded *that on the record presented to it* in the Grace Line Inc. proceedings *supra*, that bananas were susceptible to common carriage on Grace vessels only, but that finding cannot in any manner whatsoever be applied to petitioner on the record in this proceeding.

The Grace Line rulings were decided solely upon the record presented in that case. Since it is a question of fact whether a man is a common carrier or not, it is submitted that the record supports the inevitable conclusion that the petitioner, by reason of the physical makeup of its vessels, cannot carry bananas for more than one shipper.

In the *Express Cases*, 117 U. S. 1, (1886), the Court wrote as follows:

*"The reason is obvious why special contracts in reference to this business are necessary. The transportation required is of a kind which must, if possible, be had for the most part on passenger trains. It requires not only speed, but reasonable certainty as to the quantity that will be carried at any one time. As the things carried are to be kept in the personal custody of the messenger or other employee of the express company, it is important that a certain amount of car space should be specially set apart for the business, and that this should, as far as practicable, be put in the exclusive possession of the express man in charge. As the business to be done is 'express', it implies access to the train for loading at the latest, and for unloading at the earliest, convenient moment. All this is entirely inconsistent with the idea of an express business on passenger trains free to all express carriers. \* \* \* The car space that can be given to the express business on a passenger train is, to a certain extent, limited, and, as has been seen, that which is allotted to a particular carrier must be, in a measure, under his exclusive control. No express company can do a successful business unless it is at all times reasonably sure of the means it requires for transportation. On important lines one company will at times fill all the space the railroad company*

can well allow for the business. *If this space had to be divided among several companies, there might be occasions when the public would be put to inconvenience by delays which could otherwise be avoided. So long as the public are served to their reasonable satisfaction, it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security.*" (pp. 23-25)

The testimony of Mr. Borrero clearly indicated that the petitioner never held itself out as a common carrier of bananas but its dealings with prospective or actual shippers were always on the basis of a contract entered into after preliminary negotiations had been completed, which contracts provided that the entire refrigerated space was let to but one shipper for a definite period of time.

The contracts entered into by petitioner in this regard were the usual contracts known to all carriers of bananas because the shippers themselves realized that before they could engaged in a successful banana import business it was necessary to obtain a firm commitment from a steamship company that it would carry the shipper's bananas for a certain definite period of time.

Petitioner, in all its contracts, offered to the shippers the facilities which it had available for the carriage of bananas. Unlike the Grace Line vessels, which each have two or three holds specially built for the carriage of bananas, the petitioner's vessels are able to offer but one hold per ship which was not specially built for the carriage of bananas. Insofar as the reefer facilities are concerned, the testimony is clear and uncontradicted,

although rebuttal testimony was promised by counsel for the complainants in other related proceedings, which never materialized, that the refrigerating facilities of the Grace Line vessels are more suitable and more adaptable than those of the petitioner's vessels for the carriage of bananas because the Grace Line ships' reefer space was specially fitted out for the carriage of bananas while the petitioner's reefer space was fitted out for the purpose of carrying not only refrigerated cargo such as bananas, but also cargo which required a much lower temperature.

It is significant to note that the credible testimony of Mr. Friedlander was not impeached nor was it shaken in any manner whatsoever to the effect that the physical characteristics of petitioner's vessels make it impossible to service more than one shipper aboard for the purpose of carrying bananas. Mr. Friedlander, whose testimony was backed by the experience of seeing hundreds of loadings and unloadings of petitioner's vessels and a considerable amount of loadings and unloadings of Grace Line vessels, testified in great detail that even to permit three shippers, each sharing one deck alone aboard the petitioner's vessels, would cause chaos and confusion and so extend the loading or unloading time as to cause great delays in the shipments of bananas, which delays, according to Mr. Borrero, might be so disruptive upon the schedules of the vessels, particularly the southbound service which is much more remunerative to the petitioner, that it might cause the petitioner to abandon the carriage of bananas because of the harmful effect of the delays upon the southbound voyages.

A careful examination of Mr. Friedlander's testimony shows beyond a doubt that the acute problem of loading bananas aboard the petitioner's vessels commences with the very moment a longshoreman starts to walk up the staging from the barge into the side ports of its vessels which are located in the upper 'tween deck and which are so narrow as to permit only one longshoreman en-

tering and leaving the vessel at the same time. The problem of loading the petitioner's vessels increases as the longshoremen commence to walk down the stagings into the lower hold, which stagings Mr. Friedlander testified had to be placed at an acute angle because of the physical makeup of these vessels and the height of the decks, particularly the lower hold.

Certainly these problems are not found in the Grace Line refrigerated holds which, we repeat, were constructed under the guidance of competent banana carriers for the purpose of carrying this commodity.

To further complicate the loading aboard the petitioner's ships, heavy plugs, not found in the Grace Line vessels, must be removed from the square of the hatch before access is gained into the lower 'tween deck or the lower hold. Because of their size and weight they are placed about the upper and lower 'tween deck thus interfering with the movement of cargo by the longshoremen. This substantial difference between the Grace Line ships and the petitioner's vessels is further proof that the problem becomes more and more acute as the loading goes on.

Mr. Friedlander testified that the most critical point in the loading of the petitioner's vessels, came into existence after the wings of the holds had been loaded and the stackers were working towards the square of the hatch and in the square of the hatch itself. The loading at that particular point became practically a two-man operation and while that is so where only one shipper was involved, time would be gained by sending the stackers to the other decks to load cargo in the wings while the lower hold was being completely loaded and thereafter sealed with the plugs.

This insurmountable problem, which is at best alleviated by the single shipper in that he could send his stackers to the other holds to load, could not be coped with successfully by three shippers, two of whom of necessity would

have to await the completion of the loading and closing off with the plugs of the lower hold and one of whom would have to subsequently await the completion of the loading of the lower 'tween deck.

Where you have one shipper aboard, there is no problem of co-mingling his bananas and as stated above, if there was a slow down in stacking stems when the stowage reached the square of the hatch, a goodly portion of the stackers could be used to advantage in the other decks because they would be continuously stowing bananas belonging to the same shipper.

The shippers on the Grace Line vessels are not faced with this problem because of the absence of not only the lower hold but in addition thereto, there are two side ports serving each hold, or four in all on the cargo ships and six on the passenger vessels, as distinguished from only two side ports which serve the number 3 hold of petitioner's vessels.

Mr. Friedlander persuasively testified to allow a multiplicity of shippers to use the refrigerated facilities of the petitioner's vessels and if these shippers numbered three, using the same staging and cooperating to the utmost, they would cause delays of between seven to twelve hours in loading and considerable delays would be encountered in unloading in Philadelphia. The delays in loading can only be accounted for by the fact that the physical makeup of the number 3 hold of petitioner's vessels is such that three shippers cannot load as expeditiously as one while on the other hand shippers on the Grace Line vessels can load bananas within the twelve hours afforded to them by the Grace Line.

Under no circumstances, according to Mr. Friedlander's uncontradicted testimony, could the shippers load within the permissible time allowed by petitioner, namely sixteen hours. Such delays in loading would undoubtedly cause the fruit to mature sooner with the consequence that the

outturn of the cargo would constitute a greater percentage of ripens, which, as testified to by various witnesses, command a lower price than the better quality bananas.

The purported attempt to contradict Mr. Friedlander's testimony by Mr. Consolo, who changed his answers as to what the delay would amount to with a multiplicity of shippers aboard and the testimony of Mr. Adir in this regard, should be utterly disregarded and given no weight. While they both admitted, reluctantly, that there would be some delay, their testimony was not based on any experience in loading and/or unloading petitioner's vessels but was merely the product of guesswork on their part. Certainly this speculative testimony should not be given any consideration in the light of Mr. Friedlander's testimony based on his experience with petitioner's vessels and which involved over 160 voyages. The credible testimony of Mr. Friedlander is backed by the knowledge derived from his experience in loading and unloading petitioner's vessels and not on hearsay or a quick visit to petitioner's vessels.

In *Grace Bros. Inc. v. Commissioner of Internal Revenue* (CCA 9th 1949) 173 F. 2d 170, the Court in this connection wrote as follows at page 174:

"It is axiomatic that uncontradicted testimony must be followed."

The petitioner and intervener both have suggested that the Examiner and the Public Counsel go to Ecuador and Philadelphia and attend the loading and unloading of any one of petitioner's vessels, because, in the opinion of the petitioner, it would confirm beyond a doubt the testimony of Mr. Friedlander.

Mr. Consolo and Banana Distributors Inc. both failed to introduce proof to sustain their contention that they were in competition with the intervener. The cases are decisive that shippers alleging undue discrimination under

the Shipping Act must establish by clear proof that there has been "unequal treatment between competing shippers".

See *The Huber Manufacturing Company v. N. V. Stoomvaart Maatschappij "Nederland" et al.*, 4 F. M. B. 343, 347 (1953).

The cases apply the same proof requirement in respect of an allegation of preference, prejudice or advantage under Section 16, First.

The rule is equally applicable to a complaint of unjust discrimination under Section 14, Fourth. *Roberto Hernandez, Inc. v. Arnold Bernstein S, M. B. H. et al.*, 1 U. S. M. C. 686, 691 (1937). Denial of space violates the Shipping Act only if it constitutes an unjust discrimination between competitors.

Under these rules, long established and firmly held by the successive maritime regulatory bodies, the prospective shippers here fail at the threshold. Not only does their testimony fail to show that they compete with Panama Ecuador Shipping Corporation, the shipper to whom petitioner contracts its space, but shows to the contrary. Thus Consolo's witness, Mr. Meyers, president of R. Dixon & Company, testified distinctly that he is not in competition with Panama Ecuador Shipping Corporation and that Dixon sells bananas to its own customers who have no relationship with and are unknown to Consolo.

While the complaint of Banana Distributors Inc. (Docket No. 841), unlike that of Consolo (Docket No. 827), alleges that Panama Ecuador Shipping Corporation is a competitor of Banana Distributors Inc. "in the trade", the witness, Adir, was unable to support this allegation by more than a repetition of this general assertion, saying that Banana Distributors Inc. was in competition with all other importers of bananas, including Panama Ecuador Shipping Corporation. Mr. Adir nevertheless acknowledged that his firm obtained better prices for its bananas



than Panama Ecuador Shipping Corporation and that the dominant competitive forces in the banana market are United Fruit Company and Standard Fruit Company.

Mr. Friedlander testified that his company's chief competitors are unquestionably the two giants in the banana field; its prices are made to compete against them rather than against the small independent importers like itself.

It is submitted that upon all of the oral and documentary proof introduced at the hearings, the credible evidence proves beyond a doubt that the Petitioner's vessels are so different and apart from the Grace Line vessels that the rulings in those proceedings are inapplicable. It must be concluded that petitioner, in the light of the proof adduced after a full hearing, cannot, under any circumstances, be considered a common carrier of bananas but can only be considered a contract carrier for one shipper of this commodity and accordingly the contracts entered into by the petitioner with Panama Ecuador Shipping Corporation, successors to Morey and Staff, (Exs. 15 and 16) and Grand Shipping Inc. (Ex. 75), are valid and do not violate Section 16, First or Section 14, Fourth of the Shipping Act, 1916.

### CONCLUSION

A declaratory order should be entered, upholding the validity of the present contracts of the petitioner.

Respectfully submitted,

RENATO C. GIALLORENZI,  
*Attorney for Flota Mercante  
Grancolombiana, S. A.,*

26 Broadway,  
New York 4, N. Y.

*Of Counsel:*

JOHN H. DOUGHERTY.

[Certificate of Service dated January 13, 1959]

\* \* \* \* \*

## CERTIFICATE OF SERVICE

I hereby certify that I have on this 13th day of January, 1959, served the foregoing Petitioner's Brief and Proposed Findings of Fact and Conclusions upon all parties of record by mailing a copy thereof, postage prepaid, to counsel for each such party.

RENATO C. GIALLORENZI.

REQUEST FOR ORAL ARGUMENT, EXCEPTIONS  
AND  
BRIEF OF FLOTA MERCANTE GRANCOLOMBIANA,  
S.A.

*Flota's Exceptions to Recommended Decision*

1—Flota excepts to the Examiner's recommendation that the Board find that it is a common carrier of bananas.

2—Flota excepts to the Examiner's recommendation that the Board find it violated Section 14 Fourth and 16 First of the Act, by discriminating against the complainants.

4—Flota contends that the decision recommended by the Examiner is in error, is not supported by and is contrary to the evidence of record and is erroneous as a matter of law; and further contends that such recommended decision is based upon preliminary findings and conclusions which in some instances do not support and are contrary to the recommended decision and which in other instances are not supported by and are contrary to the evidence of record and the governing law.

5—Flota excepts to the finding that it violated Sections 14 Fourth and 16 First of the Act on the further ground that such a finding was without the scope of the proceedings.

## POINT II

*Flota's argument as to the second exception.*

It was error for the Examiner to find that Grancolombiana has discriminated against the complainants in Dockets 827 and 841 by contracting its space to Panama Ecuador Shipping Corporation without first finding an existing and effectual and actually competitive relationship between the complainants and the allegedly preferred shipper, and, since there is no evidence which would justify such a finding and much evidence which would support a finding to the contrary, it was error for the Examiner to find that Grancolombiana has thereby violated Sections 14 Fourth and 16 First of the Act.

The cases are decisive that a complainant alleging unjust discrimination under the Shipping Act must establish by clear proof that there has been "unequal treatment between competing shippers." *Huber v. Nederland*, 4 F. M. B. 343, 347 (1953); *Afghan-Amer. Trading Co. v. Isbrandtsen*, 3 F. M. B. 622 (1951); *United Nations v. Hellenic Lines*, 3 F. M. B. 781 (1952); *New York v. A. B. Svenska*, 4 F. M. B. 202, 205 (1953); *Kramer v. Inland Waterways*, 1 U. S. M. C. 630, 633 (1937); *Traffic Bureau v. Export*, 1 U. S. S. B. B. 538, 541 (1936). These cases apply the same proof requirement in respect of an allegation of preference, prejudice or advantage under §16 First. The rule is equally applicable to a complaint of unjust discrimination under §14 Fourth. *Hernandez v. Bernstein*, 1 U. S. M. C. 686, 691 (1937). Denial of space violates the Shipping Act only if it constitutes an unjust discrimination between competitors.

Thus in the case of *Traffic Bureau v. Export*, supra, the Secretary of Commerce stated at page 541:

"It is well settled that the existence of unjust discrimination and undue prejudice and preference is a question of fact which must be clearly demonstrated by substantial proof. As a general rule there must

be a definite showing that a difference in rates complained of is undue and unjust in that it actually operates to the real disadvantage of the complainant. In order to do this it is essential to reveal the specific effect of the rates on the flow of the traffic concerned and on the marketing of the commodities involved, *and to disclose an existing and effective competitive relation between the prejudiced and preferred shipper localities, or commodities.* Furthermore, a pertinent inquiry is whether the alleged prejudice is the proximate cause of the disadvantage." (Emphasis added)

In *Kramer v. Inland Waterways Corp.*, supra, the United States Maritime Commission, citing *Traffic Bureau v. Export*, supra, stated at page 633:

"It is well settled that the existence of unlawful preference and prejudice is a question of fact to be clearly demonstrated by substantial proof. As a general rule there must be a definite showing that the preference and prejudice complained of is undue and unreasonable in that it actually operates to the real disadvantage of the complainant. To do this *it is of primary importance that there be disclosed an existing and effective competitive relation between the prejudiced and preferred shipper.*" (Emphasis added)

Similarly the Federal Maritime Board in *New York v. A. B. Svenska*, supra, stated the rule as follows at page 205:

"In order to sustain the charge of unjust discrimination, under these provisions of the Shipping Act, complainant must prove (1) *that the preferred port, cargo, or shipper is actually competitive with complainant*, (2) that the discrimination complained of is the proximate cause of injury to complainant, and (3) that such discrimination is undue, unreasonable, or unjust." (Emphasis added)

In *Hernandez v. Bernstein*, supra, where the denial of space was charged as a violation of §14 Fourth of the

Act, the United States Maritime Commission expressly noted at page 690 the fact that the complainant Hernandez, was shipping automobiles to Spain "in competition with such [preferred] distributor".

Under these rules, long established and firmly held by the succession of maritime regulatory bodies, complainants here fail at the threshold. Not only does their testimony fail to show that they compete with Panama Ecuador Shipping Corporation, the shipper to whom Flota contracts its space, but it shows the contrary.

Consolo wisely refrained from directly claiming that he was in competition with Panama Ecuador Shipping Corporation. But he saw the need to show a competitive relationship with Panama Ecuador Shipping Corporation in order to sustain his claim of discrimination and prejudice. In a tangential way, he implanted the suggestion (in lieu of the assertion) casually and in the course of testifying about a collateral point (Tr. 229):

"Q. Do you consider yourself competitively disadvantaged by reason of the fact that you only have one arrival a week as compared with United Fruit, Standard Fruit and even as compared with Panama Ecuador Shipping Company?

\* \* \* \*

"The Witness: From my point of view, I think I am at some disadvantage by not having two arrivals a week where other companies in a competitive field have two arrivals or more per week."

But Consolo's own witness, Meyer, president of R. Dixon & Co. which distributes the bananas imported by Consolo, testified to the contrary. He stated explicitly that Consolo's importations do not compete with Panama Ecuador Shipping Corporation's importations on Flota's vessels (Tr. 702):

"Q. What effect, if any, has the importation of the Grancolombiana vessels have on the banana market

from 1955 on? A. Well, in view of the fact they don't compete with me, I wouldn't know."

Indeed, R. Dixon & Co. distributes the bananas imported by Consolo, his brother, Lovett, Joselow, and part of these imported by Noboa (Tr. 662-3, 684-5, 689). Meyer testified that the jobbers to whom he distributes bananas are his own clientele and not the clientele of the various importers for whom he distributes (Tr. 689), and that the jobbers who constitute his clientele do not even know which importer's bananas he is selling them (Tr. 689). If it is possible for competition to exist between Consolo and Panama Ecuador Shipping Corporation at any point in the marketing of the bananas they import, that possibility would seem confined to the person of Meyer, as Consolo's only customer. Meyer does not distribute Panama Ecuador Shipping Corporation's bananas (Tr. 1362), and, as Meyer's own testimony has just shown, he does not distribute Consolo's bananas in competition with those imported by Panama Ecuador Shipping Corporation.

Consolo thus has not shown the "existing and effective" and "actually competitive" essential to establish the substantive element of discrimination or prejudice which is the backbone of his case. He has shown the precise opposite.

Forewarned by this misfortune in his fellow complainant's case, Banana Distributors' witness, Adir, took a different tack. On direct examination his testimony matched Consolo's studied obliqueness (Tr. 920):

"Q. Are they a direct competitor of yours in the importing and distribution business? A. Yes, they and all the other importers of bananas."

On cross-examination, Adir, pressed for elaboration or explanation of this generality, was able to offer only additional generalities and eventually was led by his enthusiastic self-admiration into inconsistencies. Undeterred by

Meyer's forthright testimony to the distinct contrary, he offered unsupported assertions of a universally competitive relationship between everyone in the banana business and the unique theory that all bananas compete with all bananas (Tr. 1017-20):

"Q. You testified that Panama Ecuador is in competition with you. Can you tell us to what extent?

A. All bananas imported, no matter by whom, are in competition with the other bananas imported. It is a market commodity.

"Q. But you can't pinpoint any certain percentage or anything like that? A. I told you that we do sell some customers together, but even the ones that we don't sell together, they are in competition. They may be in the same area or we may not be able to sell their accounts, they may not be able to sell ours. I don't just mean direct competition where we buy for the account or sell them jointly or along with United Fruit, but we may call on one account and have them for a customer and at a later date they may successfully sell them, or vice versa. That is the extent of competition. We compete with the United Fruit Company, also.

"Q. Do you compete with Standard Fruit Company?

A. Whoever brings in bananas competes. I don't suppose United would make that statement but any others than United would.

"Q. The price of bananas you obtain, are they similar to the prices Panama Ecuador obtains?

\* \* \* \*

"Q. You heard Mr. Dixon testify, or, rather, Mr. Meyer, and I believe Mr. Consolo testify, that the price of bananas generally at Philadelphia is the same that you can obtain in New York. Do you agree with that statement? A. You can sell bananas in Philadelphia and in New York for the same price, but we don't sell bananas most times for the price that—your question was, and I'd be glad to answer, do we get the same for our sales as Panama Ecuador does?

"Q. Yes. A. I would say that we get more.

"Q. You get more? A. So I would think or I am positive that if we sold bananas in Philadelphia we'd

get the same price that we get in New York, not that they get in Philadelphia.

"Q. And your price in New York is more than the price in Philadelphia? A. I think on an average cargo we average more per pound than they do."

Adir, Banana Distributors' only witness, did not suffer the embarrassment of hearing himself contradicted by a witness he had sponsored. But his lighthearted generalities, less vulnerable because less specific, did not advance his case nor cure the conflict in Consolo's. The fact that bananas can be sold for the same prices in the same areas from Philadelphia and from New York, if it is a fact, certainly does not demonstrate that Consolo or Banana Distributors are in competition with Panama Ecuador. Competition is the act of striving for something held by another.

Meyer's unhesitating disclaimer of competition with Panama Ecuador Shipping Corporation is confirmed by Friedlander who offered convincing and uncontradicted testimony as to why he is not in competition with Consolo and Banana Distributors. United Fruit is the dominant competitive force in the market, (Tr. 1616) a proposition to which Adir agreed, adding the confirmatory footnote that in the recent market anyone can sell bananas because of United Fruit's shortage of bananas (Tr. 1022).

Friedlander can get better prices by selling against United Fruit than against a small independent (Tr. 1615). Most of his accounts, and his best accounts, are jobbers who look to him to supplement what United Fruit supplies them (Tr. 1614). These accounts are the mainstay of his business; in toto, accounts who buy from him and also from other independents, including accounts who also buy from United Fruit, constitute at most 75 per cent. of his sales (Tr. 1616).

There is surely nothing in the testimony of the complainants that would justify a finding that there is an



“existing and effective” and “actually competitive” relationship between Consolo or Banana Distributors and Panama Ecuador Shipping Corporation. There is much in their testimony and in that of Friedlander to support a finding to the contrary. In the absence of such a competitive relationship, it was error for the Examiner to find that Flota had discriminated against the complainants in Docket Nos. 827 and 841 by contracting its space to Panama Ecuador Shipping Corporation, or that Flota has violated the Act in so doing. This result follows even if Flota were a common carrier of bananas, which Flota denies. This result also follows even if the Board should decide in response to the petition for a declaratory order in Docket No. 841, that Flota as a common carrier, is required under the decision of the Board in *Banana Distributors, Inc. v. Grace Line Inc.*, supra, to cancel its contract with Panama Ecuador Shipping Corporation.

\* \* \* \* \*

#### POINT IV

##### *Flota's argument as to the fourth exception.*

The Examiner, in reaching the conclusion that Flota, like Grace Line Inc., is a common carrier of bananas capable of carrying bananas for multiple shippers under contracts for a two-year period, disregarded the credible and uncontradicted evidence offered by Flota and its shipper and based his findings purely on speculation. It then became apparent to the Examiner that once having embarked on this course as a basis for his decision, that he should attempt to rationalize his decision by suggesting ways and means to Flota as to the manner of loading, carrying and discharging the banana cargoes.

\* \* \* \* \*

Mr. Consolo, although he knew that Flota had refrigerated space available for the carriage of bananas, revealed in his testimony that he was not only critical of the regu-

larity of the schedules (Tr. 274) but also the construction of the bottom chamber or lower hold claiming that the same were too high for the proper stowage of bananas (Tr. 276) and at least 25 per cent. of the space in that hold was lost because of that fact (Tr. 277).

This view as to the inadequacy of Flota's vessels as banana carriers was shared by Mr. Paletz, the principal officer of Banana Distributors, Inc. (Tr. 1061, 1062).

\* \* \* \* \*

Mr. Visconti, a refrigerating engineer with considerable background, was of the opinion that it would take two hours for each hour the holds were open to bring the hold temperature down to the proper level (Tr. 1716) and applying this to Mr. Friedlander's estimates of additional loading time required if three shippers were to load from between seven to twelve hours, it would take between fourteen and twenty-four hours additionally to bring the hold temperature down to the proper temperature. Mr. Visconti was also of the opinion that some twelve additional hours would be required for the pulp to cool down to the proper hold temperature (Tr. 1745). He further testified that both the refrigerated holds of the Grace Line ships and United Fruit Company ships were built exclusively as banana carriers, while this is not true with reference to the Flota's ships (Tr. 1741, 1742). Mr. Friedlander testified that the physical characteristics of the Grace Line vessels which have only two decks in each hold permit the loading of 10,000 or 11,000 stems in each hold as distinguished from 15,000 stems loaded into the hold of Flota's vessels, in addition to the improved ventilating condition of the Grace Line ships and the greater refrigerating capacity, allow the Grace Line to service multiple shippers in one hold as distinguished from Flota's vessels (Tr. 1170, 1171).

In view of the facts presented in this proceeding, which are so basically different from the facts presented in both

Grace Line Inc. decisions *supra*, it is clear that this proceeding is distinguishable and that the Grace Line Inc. decisions, *supra* are inapplicable.

\* \* \* \* \*

## POINT V

### *Flota's argument as to the fifth exception.*

Flota filed its petition for a declaratory order as to whether its contracts with banana shippers to Atlantic and Gulf ports had to be cancelled in view of the Board's ruling in *Banana Distributors, Inc. v. Grace Line Inc.*, *supra*.

Thereafter Consolo filed his complaint in Docket No. 827 and belatedly *Banana Distributors, Inc.* filed a similar complaint in Docket 841.

Counsel for Flota urged (Tr. 4) that proof should be offered on Flota's petition for a declaratory order first, which request was rejected (Tr. 6, 7) and the proceedings then continued by having the complainants' cases heard first. The Examiner, on motion made by complainants' attorneys (Tr. 831) and over the objection of Flota's attorney (Tr. 878-889), severed the issue of reparation thereby at the same time withdrawing from the proceedings any possible finding of a violation of Sections 14 and 16 of the Act. Therefore, the only remaining issue was that posed by Flota in its petition for a declaratory order, to wit:

"Whether Petitioner is required under the rulings of the Federal Maritime Board in *Banana Distributors, Inc. v. Grace Line Inc.*, Docket No. 771 and *Arthur Schwartz v. Grace Line Inc.*, Docket No. 775, to cancel the contracts which it has with its present shippers for the carriage of bananas from Ecuadorian ports to United States ports."

The issue therefore having been removed from the proceedings as to whether or not reparations were to be considered and also whether or not there was a violation of Sections 14 and 16 of the Act, the Examiner, in finding such a violation in his recommended decision (page 16, Finding No. 2), went beyond the scope of the issues before him and accordingly such finding of a violation of Sections 14 and 16 of the Act could not be supported under the very ruling made by the Examiner whereby the issue of reparations was deferred.

[Certificate of Service dated March 5, 1959.]